89-952

No.

In The
Supreme Court of the United States

October Term, 1989

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS; USX CORPORATION, as plan sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, plan administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND,
Petitioners,

v.

GLENN MUSISKO AND ALL OTHERS SIMILARLY SITUATED to Glenn Musisko, and THE HONORABLE SILVESTRI SILVESTRI in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Does section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), which authorizes federal district courts to enjoin *any* act or practice which violates ERISA or the terms of an ERISA-regulated employee benefit plan, come within the "expressly authorized" exception to the Anti-Injunction Act's prohibition against enjoining state court proceedings?

LIST OF PARTIES AND RULE 28.1 LIST

The caption of the case contains the names of all parties to this proceeding in the court whose judgment is sought to be reviewed.[1]

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[1]The following is a listing of all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of USX Corporation, as required by Rule 28.1 of the Rules of the United States Supreme Court: Athlone Prospecting & Development Corporation, Ltd.; Companhia Siderurgica Paulista "Cosipa"; Merinds Mineracao (Partnership); Mineracao Buritirama Ltda.; Mineracao Carajas, Ltda. (Partnership); Mineracao Maraba, Ltda. (Partnership); Mineracao Xingu, Ltda. (Partnership); Termerid Mineracao, SA; Torremco Soc. Min. E Com. Ltda. (Partner); Deepsea Ventures, Inc.; Ocean Mining Associates—Joint Venture; USS-POSCO Industries—Partnership; USS/Kobe Steel Company; U.S. Steel France; Compagnie Miniere de l'Ogooue (Comilog); USS Technology (Japan) Ltd.; ACE Holdings, Ltd.; Coda Holding, Ltd. (CODA-H) Corporate Officers & Directors Assurance, Ltd. (CODA); Adela Investment Company, S.A.; Altos Hornos de Vizcaya, S.A. (AHV); Chrome Deposit Corp. (Court Holdings J.V.); La Pointe Iron Company; Societe Des Mines De Fer De Guinee Pour L'Exploitation Des Monts Nimba (Mifergui Nimba); Tilden Iron Mining Company; The West Union Canal Company; Zuari Agro Chemicals Ltd.; Fort Meade Chemical Products; Double Eagle Steel Coating Co.—Joint Venture; Live Oak Uranium Operations; National Oilwell—Partnership; Rockland Joint Venture (Cost-Sharing); Worthington Specialty Processing; Arctic LNG Transportation Company; Badger Pipe Line Company; CLAM Petroleum Company; Cook Inlet Pipe Line Company; Explorer Pipeline Company; Gravcap, Inc.; Green Bay Terminal

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(Continued)
Corporation; Kenai LNG Corporation; LOCAP, Inc.; LOOP Inc.; Maralou Netherlands Partnership; Oasis Oil Company of Libya, Inc.; Oil Insurance Limited; The Pecos Carbon Dioxide Pipeline Company; Petroleum Terminals, Inc.; Platte Pipe Line Company; Polar LNG Shipping Corporation; Tri Star Marketing Inc.; Wake Up Oil Co., Inc.; West Shore Pipe Line Company; Wolverine Pipe Line Company; Acadian Gas Pipeline System; Bayou Interstate Pipeline System; Calcasieu Gas Gathering System; Laredo Nueces Pipeline Company; Louisiana Industrial Gas Supply System; Neches Pipeline System; Pelican Interstate Gas System; Pelican Transmission System; Pontchartrain Natural Gas System; Spindletop Gas Distribution System; Alabama Intrastate Supply; Red River Pipeline; Red River Pipeline Corporation; Ozark Finance Corporation; and Ozark Gas Transmission System.

Petitioners United States Steel And Carnegie Pension Fund, United States Steel Corporation Plan for Employee Insurance Benefits, and United States Steel Insurance Benefit Trust Fund have no parent companies, subsidiaries or affiliates to list pursuant to Rule 28.1.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners United States Steel Corporation Plan For Employee Insurance Benefits ("Plan"), USX Corporation ("USX"), United States Steel And Carnegie Pension Fund ("Plan Administrator"), and United States Steel Insurance Benefit Trust Fund ("Trust Fund") respectfully pray that a writ of certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit entered in this proceeding on September 21, 1989.

OPINIONS BELOW

The September 21, 1989 Judgment and Opinion of the United States Court of Appeals for the Third Circuit ("Third Circuit"), which is reported at 885 F.2d 1170 (3d Cir. 1989), is reprinted in Appendix A hereto beginning at page 1a, *infra.*

The February 7, 1989 Opinion and Order of the United States District Court for the Western District of Pennsylvania, which is not reported, is reprinted in Appendix B hereto beginning at page 23a, *infra.*

JURISDICTIONAL STATEMENT

The judgment of the Third Circuit sought to be reviewed was dated and entered on September 21, 1989. This Court has jurisdiction to review the judgment pursuant to 28 U.S.C. § 1254(1). This petition is timely under 28 U.S.C. § 2101(c).

STATUTES INVOLVED

Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132 (1982), provides in pertinent part:

> **(a) Persons empowered to bring a civil action**
>
> A civil action may be brought—
>
> (1) by a participant or beneficiary—
>
> * * *
>
> (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms

of the plan, or to clarify his rights to future benefits under the terms of the plan;

* * *

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

* * *

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) [29 U.S.C. § 1132(a)] of this section in any action.

Section 514 of ERISA, 29 U.S.C. § 1144 (1982), provides in pertinent part:

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State

laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title [29 U.S.C. § 1003(a)] and not exempt under section 1003(b) of this title [29 U.S.C. § 1003(b)]. . . .

(b) Construction and application

* * *

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

(B) Neither an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

The Anti-Injunction Act, 28 U.S.C. § 2283 (1982), provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

This case has evolved from an attempt by employees of United States Steel Corporation (now USX) to obtain sickness and accident benefits under an ERISA-regulated, collectively-bargained employee benefit plan ("Plan").[2]

The Plan was organized in 1950 to provide insurance benefits, including sickness and accident benefits, to USX employees. USX contributes to the Plan, which provides the sickness and accident benefits through the Trust Fund. In addition, the Plan has insured itself against claims in excess of a "threshold" amount through a "stop-loss" group insurance policy issued by the Equitable Life Assurance Society of the United States ("Equitable") to the Trust Fund. The benefits sought by Glenn Musisko and his class would be paid from the Trust Fund unless and until the amount of benefits exceeded the aggregate amount

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[2]The plan is known as the Program of Insurance Benefits ("PIB") which was established pursuant to a collectively-bargained insurance agreement between United States Steel and the United Steel Workers of America. The PIB is a component of the United States Steel Corporation Plan For Employee Insurance Benefits, which is an ERISA-regulated "employee welfare benefit plan" as defined in section 3(1) of ERISA, 29 U.S.C. § 1002(1). The United States Steel And Carnegie Pension Fund is a named fiduciary of the Plan and is the Plan Administrator. USX Corporation is the Plan Sponsor. Musisko and the members of the class are participants in the Plan within the meaning of section 3 of ERISA, 29 U.S.C. § 1002.

specified in the insurance policy. In all years encompassed by Musisko's class action claim (as well as in all other prior years) claims for sickness and accident benefits have never reached the aggregate amount which would trigger Equitable's liability under the insurance policy.

In July 1982, Musisko was injured in a non-work related automobile accident which resulted in Musisko missing time at work. As a result of that accident, Musisko made a claim for work loss benefits under the sickness and accident provisions of the PIB. His claim for work loss benefits was denied pursuant to an express offset provision in section 9.37 of the PIB.

The express offset provision in section 9.37 prevents Plan participants from receiving a double recovery of benefits of the type which the Plan provides. When a participant, who might otherwise be entitled to medical or work loss benefits under the Plan, has already received such benefits from his no-fault motor vehicle insurance carrier, the offset prohibits a double recovery from the PIB for the same benefits. The PIB does this by taking "credit" for the amount of benefits which the participant received from his no-fault carrier. Thus, if the benefits due under the PIB are greater than the amount the participant has already received, the PIB will pay the difference. If the benefits due under the PIB are less than or equal to the amount which the participant already received, no benefits are due from the PIB. Because Musisko had already received from his no-fault automobile insurance carrier an amount greater than the maximum amount of work loss benefits available under the PIB, his claim was denied.

As required by ERISA, the PIB incorporates a procedure for a review of appeals from claim denials. The same

letter that notified Musisko of the denial of his claim specifically informed him of the appeal procedure incorporated in section 10 of the PIB, which provides that a dispute relating to the PIB is to be processed as an Insurance grievance under the collectively-bargained Basic Labor Agreement.[3]

Rather than filing an Insurance grievance as required by the Basic Labor Agreement and the PIB, however, Musisko filed a lawsuit in state court (hereinafter referred to as the "State Court Action") under state common law against Equitable. None of the Plaintiffs in the instant federal action, not even Musisko's employer or the ERISA-regulated Plan from which he sought benefits, were named as defendants in that suit.

The state court granted summary judgment for Equitable (based on state law) in March 1984. On appeal, the Pennsylvania Superior Court reversed. In its decision, the Superior Court held that under state contract law, Musisko was entitled to the benefits he sought from the Plan. *Musisko v. Equitable Life Assurance Soc'y,* 344 Pa. Super. 101, 106, 496 A.2d 28, 30 (1985). The Superior Court's decision in the State Court Action rested upon the general principle of Pennsylvania contract law that an ambiguity in the contract should be construed against the drafter. *Id.*

The Plan only learned of the State Court Action *after* the Superior Court had rendered its decision. The case was

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[3]In fact, interpretation of the offset provision had been submitted to arbitration under the Insurance grievance process on at least two prior occasions. In the one decision rendered on the merits, the Plan's interpretation of the offset provision was upheld by the USS/USWA Board of Arbitration. *United States Steel Corp., Eastern Steel Div., National-Duquesne Works and United Steelworkers of America Local Union No. 1408,* Grievance No. EN-80-158 (Dybeck, 1981).

called to the Plan's attention when Musisko's counsel contacted the Plan Administrator in mid-1986 in an attempt to identify potential class members.[4] Plaintiffs subsequently filed this action in the United States District Court for the Western District of Pennsylvania under, *inter alia,* section 502(a)(3) of ERISA seeking to halt the State Court Action and to declare that the actions taken by the Pennsylvania state courts were null and void under ERISA.[5]

The District Court, on February 7, 1989, granted summary judgment in favor of Plaintiffs. Relying on this Court's decisions in *Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. 41 (1987) and *Metropolitan Life Ins. Co. v. Taylor,* 481 U.S. 58 (1987), the District Court declared that application of state law in Musisko's State Court Action is preempted by ERISA. The District Court also enjoined Musisko, his class, and the state court trial judge from proceeding further in that suit under any law other than ERISA. *See infra* Appendix B at 31a.

On appeal, the Third Circuit reversed on the grounds that the District Court's injunctive and declaratory orders were prohibited by the Anti-Injunction Act, 28 U.S.C. § 2283. *See infra* Appendix A at 15a-16a, 21a. In its opinion, the Third Circuit recognized that this Court has not had the occasion to consider whether Congress expressly intended ERISA to authorize federal injunctions against state court proceedings. The Third Circuit went on to hold, however, that Plaintiffs had failed to produce "sufficient

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[4]Musisko had amended his complaint in 1983 to convert it from an individual action to a class action.

[5]Plaintiffs also asserted in their federal court suit that the actions of the Pennsylvania state courts were in violation of the National Labor Relations Act. That issue is not presented in this Petition.

evidence in the legislative history demonstrating that Congress recognized and intended the statute [ERISA] to authorize injunction of state court proceedings." *See infra* Appendix A at 16a.

Because the Third Circuit's holding is in direct conflict with decisions of at least two other courts of appeals, is contrary to the language and legislative history of ERISA, and misapplies the standard for interpreting the Anti-Injunction Act enunciated by this Court in *Mitchum v. Foster*, 407 U.S. 225 (1972), Petitioners seek review in this Court.

REASONS FOR GRANTING THE WRIT

I. The Third Circuit's Holding That ERISA Was Not Intended To Authorize Injunctions Against State Court Proceedings Is Contrary To The Language And Legislative History Of ERISA And Jeopardizes Uniform Federal Regulation Of The Employee Benefit Field.

ERISA comprehensively regulates, among other things, employee welfare benefit plans that provide benefits in the event of sickness, accident, disability or death. ERISA § 3(1), 29 U.S.C. § 1002(1). In enacting ERISA, Congress provided for broad federal pre-emption of the employee benefit plan area. The ERISA pre-emption provision is contained in section 514(a), 29 U.S.C. § 1144(a), which provides in the clearest possible terms that all state laws purporting to regulate employee benefit plans subject to ERISA are pre-empted unless specifically excepted. In full, section 514(a) provides:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter

> III of this chapter shall supersede *any and all State laws insofar as they may now or hereafter relate to any employee benefit plan* described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975. [Emphasis added.]

This Court has observed on several occasions that the express pre-emption provisions of ERISA are deliberately expansive, and are designed "to establish pension plan regulation as exclusively a federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987).

The legislative history of ERISA confirms repeatedly and unequivocally both the breadth and importance of ERISA's pre-emption provisions. As this Court explained in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983):

> The bill that became ERISA originally contained a limited pre-emption clause, applicable only to state laws relating to the specific subjects covered by ERISA. The Conference Committee rejected those provisions in favor of the present language, and indicated that the section's pre-emptive scope was as broad as its language. See H.R. Conf. Rep. No. 93-1280, p. 383 (1974); S. Conf. Rep. No. 93-1090, p. 383 (1974). [Footnote omitted.]

Three members of the Conference Committee emphasized the importance of the pre-emption provisions at length—and without contradiction—in prepared remarks on the floor of the House and the Senate. Congressman Dent, who had introduced the first House version of ERISA, explained the broad pre-emption approach contained in the final bill:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority of the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation.
>
> * * *
>
> The conferees, with the narrow exceptions specifically enumerated, applied this principle in *its broadest sense to foreclose any non-Federal regulation of employee benefit plans.* Thus, the provisions of section 514 would reach *any* rule, regulation, practice or *decision* of any State, subdivision thereof or *any agency or instrumentality thereof*—including any professional society or association operating under code of law—which would affect any employee benefit plan as described in section 4(a) and not exempt under section 4(b).[6]

Senator Williams, who had introduced the first Senate version of ERISA, gave a similar report to the Senate. Senator Williams said:

> It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to *all* actions of State or local governments, or *any* instrumentality thereof, *which have the force or effect of law.*[7]

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[6]120 Cong. Rec. 29197 (1974) (emphasis added).

[7]120 Cong. Rec. 29933 (1974) (emphasis added).

Further, Senator Javits, a leading sponsor of ERISA, explained why total pre-emption, rather than limited pre-emption, was adopted:

> Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interest of *uniformity* with respect to interstate plans *required*—but for certain exceptions—*the displacement of State action in the field of private employee benefit programs.*[8]

The House Report explained further:

> The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.[9]

In short, the evolution of ERISA's pre-emption provisions, the committee reports thereon, and the comments of its drafters unanimously confirm that Congress meant to pre-empt *all* state laws and *all* state actors unless specifically excepted from pre-emption. This Court made clear in *Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. at 47, that state decisional law made by state courts is included within the sweep of ERISA's broad pre-emption provisions:[10]

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[8]120 Cong. Rec. 29942 (1974) (emphasis added).

[9]H.R. Rep. No. 93-533, p. 12 (1973), *reprinted in 2 Senate Committee on Labor and Public Welfare, Legislative History of ERISA,* 94th Cong., 2d Sess. 2359 (Comm. Print 1976).

[10]Moreover, the Act expressly states that for purposes of section 514, "[t]he term 'State law' includes all laws, *decisions,* rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1) (emphasis added). *See also Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. at 48 n.1.

> There is no dispute that the common law causes of action asserted in Dedeaux's complaint "relate to" an employee benefit plan and therefore fall under ERISA's express pre-emption clause, § 514(a).

ERISA's enforcement provisions also make clear that the acts of state courts were not meant to be immune from ERISA's comprehensive scheme for ensuring uniform federal regulation of the employee benefit field. In *Metropolitan Life Insurance Company v. Taylor,* 481 U.S. 58 (1987), this Court held that state law claims for plan benefits are not only pre-empted by ERISA but (with only a few exceptions) are *completely displaced* by ERISA's civil enforcement provisions. In other words, even where a participant attempts to assert a pure state law claim against a plan or the plan's insurer, the participant's claim is in fact governed *exclusively* by ERISA. 481 U.S. at 62-63.

In fact, this Court's ruling in *Metropolitan Life* is directly applicable to Musisko's claim:

> Under our decision in *Pilot Life* . . . common law contract and tort claims are pre-empted by ERISA. This lawsuit "relate[s] to [an] employee benefit plan." § 514(a), 29 U.S.C. § 1144(a). It is based upon common law of general application that is not a law regulating insurance. Accordingly, the suit is pre-empted by § 514(a) and is not saved by § 514(b)(2)(A). Moreover, as a suit by a beneficiary to recover benefits from a covered plan, it falls directly under § 502(a)(1)(B) of ERISA, which provides an exclusive federal cause of action for resolution of such disputes.

Metropolitan Life, 481 U.S. at 62-63 (citations omitted).

Additionally, ERISA's enforcement scheme expressly authorizes federal district courts to enjoin *any* acts or practices which violate ERISA or the terms of an ERISA-regulated plan. Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), states in pertinent part as follows:

> (a) A civil action may be brought . . . (3) by a participant, beneficiary, or fiduciary (A) *to enjoin any act or practice* which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan. [Emphasis added.]

A related provision, section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), confers on federal district courts exclusive jurisdiction of civil actions brought under section 502(a)(3) to enjoin acts or practices which violate ERISA or the terms of a plan.

There is absolutely nothing in the language or in the legislative history of ERISA to support the Third Circuit's view that acts or practices of state courts were meant to be shielded from the district court's injunctive and declaratory powers under section 502(a)(3). On the contrary, as discussed above, the express statutory language and the overwhelming consensus of the drafters indicate that ERISA was intended to provide a comprehensive enforcement scheme which ensured exclusive and uniform federal regulation of the employee benefit plan field. The actions of state courts—in using state law to regulate employee benefit plans—present a threat to uniform federal regulation just as the actions of state administrative tribunals or state legislators present such a threat to federal uniformity

and exclusivity.[11] None of these state actors were excluded by Congress from the scope of section 502(a)(3).

A writ of certiorari should be granted to review the Third Circuit's holding, which improperly carves out an exception to the scope of section 502(a)(3) for state decisional law and the actions of state courts, thereby jeopardizing the clear intent of Congress to ensure uniform federal regulation of the employee benefit field.

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[11]Indeed, under ERISA, the Plan is entitled to judgment against Musisko and the class for at least two reasons. First, as a matter of federal law under ERISA, no civil action may be brought by a participant or beneficiary until he has first exhausted the review procedure contained in the plan upon which his suit is based. *See, e.g., Amato v. Bernard,* 618 F.2d 559, 567-68 (9th Cir. 1980); *Challenger v. Local Union No. 1 of the Int'l Bridge, Structural & Ornamental Ironworkers,* 619 F.2d 645, 649 (7th Cir. 1980). Because Musisko failed to exhaust his remedies under the Plan, no court has subject matter jurisdiction to hear his claim. Second, the USS/USWA Board of Arbitration has been given final and binding authority to interpret disputed terms of the Plan. The interpretational question that Musisko presents has been fully arbitrated, and the Board of Arbitrators has upheld the Plan's interpretation. *United States Steel Corp., Eastern Steel Div., National-Duquesne Works and United Steelworkers of America, Local Union No. 1408,* Grievance No. EN-80-158 (Dybeck, 1981). At this point, it would be a breach of fiduciary duty under ERISA for the Board of Arbitrators to *depart* from that interpretation, as they would have to in order to decide in favor of Musisko. *See Dist. 2, United Mine Workers v. Helen Mining Co.,* 762 F.2d 1155 (3d Cir.), *cert. denied,* 474 U.S. 1006 (1985).

II. In Holding That Injunctions Against State Court Proceedings Are Not Authorized By ERISA, The Third Circuit Has Misapplied The Test Enunciated By This Court In *Mitchum v. Foster* For Interpreting The "Expressly Authorized" Exception To The Anti-Injunction Act.

The Anti-Injunction Act, which generally prohibits federal courts from granting injunctions to stay proceedings in state courts, specifies three circumstances in which its bar will not apply: where the injunction (i) is expressly authorized by Congress; (ii) is necessary in aid of the federal court's jurisdiction; or (iii) is necessary to protect or effectuate the federal court's judgment. 28 U.S.C. § 2283. The first of those circumstances is applicable here: the bar of the Anti-Injunction Act does not apply where the injunction is "expressly authorized by Act of Congress."

The leading case construing this so-called "expressly authorized" exception to the Anti-Injunction Act is this Court's decision in *Mitchum v. Foster,* 407 U.S. 225 (1972). In *Mitchum v. Foster,* this Court made it clear that in order to qualify under the "expressly authorized" exception of the Anti-Injunction Act, a federal law need not contain an express reference to the Anti-Injunction Act nor expressly authorize an injunction of a state court proceeding. Instead, the pertinent test is as follows:

> [W]hether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding.

Mitchum v. Foster, 407 U.S. at 238.

Although the Third Circuit acknowledged that *Mitchum v. Foster* is the "leading case" on the issue

presented herein, it failed to address the critical issues of this case in the context of the two-pronged *Mitchum* test: (i) whether ERISA creates a uniquely federal right or remedy enforceable in a federal court of equity, and (ii) whether ERISA can be given its intended scope only by staying the state court proceeding.[12]

ERISA clearly creates a host of federal rights and remedies—in fact, with only a few exceptions not relevant here, ERISA completely occupies the field of employee benefits law to the exclusion of state law. *See Pilot Life*, 481 U.S. at 48. Among the many rights created by ERISA is the right of an employee benefit plan to be free of regulation under state law. Sections 502(a)(3) and 502(e)(1) of ERISA allow plan fiduciaries to file suit exclusively in federal district court to enjoin state action in violation of ERISA, including state action in violation of section 514(a). The first prong of the *Mitchum* test is clearly met; the only issue remaining under *Mitchum* is whether the district court's injunction is necessary to give ERISA its intended scope.

Instead of attempting to determine the intended scope of ERISA, however, the Third Circuit merely looked at section 502(a)(1)(B) of ERISA, which provides for concurrent state and federal court jurisdiction over a participant's or beneficiary's suit to recover plan benefits. Based on that

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[12]The Third Circuit's reliance on *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977) (plurality opinion), is misplaced. The Third Circuit emphasized this Court's statement in the *Vendo* case that section 16 of the Clayton Act lacked any legislative history to indicate that Congress intended to authorize injunctions against state courts under that section. *See* Appendix A at 13a. Clearly, however, in light of the legislative history of ERISA discussed *supra* at 10-12, the instant case is distinguishable from *Vendo*. *See, e.g., General Motors Corp. v. Buha*, 623 F.2d 455, 458-59 (6th Cir. 1980).

single provision of the statute, and disregarding the extensive legislative history discussed *supra* at 10-12, the Third Circuit concluded:

> Nowhere in the comprehensive legislative record is there any indication that Congress intended to authorize injunctions against state courts. Indeed, the very act of delegating concurrent jurisdiction to the state courts for resolution of beneficiaries' claims is evidence of Congress' satisfaction that state tribunals would fairly and competently adjudicate such cases. In contrast to the misgivings about state courts articulated in section 1983's legislative history, *see Mitchum*, 407 U.S. at 238-42, the grant of jurisdiction to the state judiciaries to resolve ERISA claims represents a congressional vote of confidence.

See infra Appendix A at 15a.

The Third Circuit's interpretation, however, does not square with the overwhelming desire of Congress to ensure a system of uniform, exclusive federal regulation of the employee benefit plan field.[13] The fact that state courts

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[13]This Court, in direct contrast to the Third Circuit's holding, noted in *Pilot Life* that the fact that "ERISA's civil enforcement remedies were intended to be exclusive. . . is *fully confirmed by the legislative history of the civil enforcement provision.*" 481 U.S. at 54 (emphasis added). *Accord Metropolitan Life*, 481 U.S. at 65. *The Pilot Life* opinion points specifically to a provision of ERISA's legislative history which demonstrated that the pre-emptive force of ERISA section 502(a) was modeled on section 301 of the Labor-Management Relations Act of 1947. The Court noted that even though actions brought by a beneficiary or participant under section 502(a) to recover benefits may be brought in either federal or state court, *"All such actions in Federal or State courts are to be regarded as arising under the laws of the United States. . . ."* 481 U.S. at 54-55, *quoting* H.R. Conf. Rep. No. 93-1280, p. 327 (1974). *Accord Metropolitan Life*, 481 U.S. at 65-66. In fact, noted the Court in *Pilot Life*, "the entire comparison of ERISA's § 502(a) to § 301 of the

(Continued on next page)

were given concurrent jurisdiction by Congress to hear claims under section 502(a)(1)(B) does not immunize those state courts from the pre-emption mandate of section 514(a) or from a cause of action by a plan fiduciary under section 502(a)(3) alleging a breach of section 514(a). On the contrary, it simply grants to state courts jurisdiction *to apply ERISA law to a participant's or beneficiary's claim for plan benefits,* not to disregard it with impunity in favor of state law in direct violation of section 514(a).

Moreover, this Court made clear in *Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. at 52-56, that allowing participants or beneficiaries to obtain remedies under state law theories (as the Third Circuit's holding would permit) would completely undermine the purposes and objectives of Congress:

> In sum, the detailed provisions of § 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA.

Id at 54. It seems clear, therefore, that ERISA can be given its intended scope only by permitting injunctions against all state actors, including state courts, because in the

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LMRA, would make little sense if the remedies available to ERISA participants and beneficiaries under § 502(a) could be supplemented or supplanted by varying state laws." 481 U.S. at 56. *Accord Metropolitan Life,* 481 U.S. at 65-66.

absence of such injunctive relief, participants like Musisko and his class would be free to attempt to obtain remedies under the very state law theories that Congress rejected in ERISA, thereby completely undermining the federal scheme.

The Third Circuit's misapplication of *Mitchum* frustrates Congress' unequivocal and express purpose in ERISA of "eliminating the threat of conflicting and inconsistent State and local regulation" of employee benefit plans. 120 Cong. Rec. 29197 (1974). Only injunctive relief, enjoining the state court from proceeding in the instant case under any law other than ERISA, could give effect to this clear and unequivocal Congressional intent in ERISA. As this Court has recognized, ERISA was designed to make employee benefit plan regulation "exclusively a federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. at 523. To uphold that fundamental principle of ERISA, the federal courts must be able to enjoin state courts from attempting to regulate those plans, as the Pennsylvania Superior Court did here, under state and local law.

III. The Third Circuit's Holding That Congress Did Not Intend ERISA To Authorize Injunctions Against State Court Proceedings Conflicts With Decisions Of At Least Two Other Courts Of Appeals.

This Court should issue a Writ of Certiorari because a conflict exists among the courts of appeals concerning a critically important issue of law in the employee benefit area: whether federal courts in ERISA actions may stay state court suits, which violate ERISA or the terms of an ERISA-regulated employee benefit plan, pursuant to the

"expressly authorized" exception to the Anti-Injunction Act.

The Third Circuit has held that there is insufficient evidence in either the language or legislative history of ERISA to indicate that Congress intended to authorize injunctions against state courts. Thus, according to the Third Circuit, the Anti-Injunction Act bars federal courts acting under ERISA from enjoining state court proceedings, even though ERISA pre-empts the state law causes of action upon which the state court purports to act.

In contrast, at least two other courts of appeals have stated that the Anti-Injunction Act does not preclude federal courts from enjoining state court proceedings which violate ERISA because Congress, in enacting ERISA, has expressly authorized such injunctions. *Gilbert v. Burlington Indus., Inc.*, 765 F.2d 320 (2d Cir. 1985), *aff'd mem. sub nom. Roberts v. Burlington Indus., Inc.*, 477 U.S. 901 (1986); *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir. 1980); *Marshall v. Chase Manhattan Bank*, 558 F.2d 680 (2d Cir. 1977).[14]

In *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir. 1980), the defendant (Buha) obtained a state court judgment in a tort action. When the judgment was not paid, Buha instituted post-judgment garnishment proceedings in state court pursuant to which a writ of garnishment was served on the trustee of a General Motors pension

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[14]In an unpublished opinion, the Fifth Circuit, like the Third Circuit, has held that the Anti-Injunction Act precludes federal district courts from enjoining a pending state court action under section 502(a)(3) of ERISA. A petition for a Writ of Certiorari in that case is pending. *Income Security Corp., Inc. v. Louisiana Oilfield Contractors Ass'n*, No. 88-4450, slip op. (5th Cir. Mar. 22, 1989), *petition for cert. filed*, 58 U.S.L.W. 3009 (U.S. June 26, 1989) (No. 88-2117).

fund. General Motors filed an action in federal court seeking to restrain enforcement of the writ of garnishment. The district court enjoined the judgment creditor and the state court judge from enforcing or attempting to enforce the writ of garnishment. Buha appealed, asserting (among other things) that the injunctive order violated the Anti-Injunction Act. The Sixth Circuit rejected that contention, holding that ERISA "meets both prongs of the *Mitchum* test." 623 F.2d at 459. The court explained further:

> When a district court finds that an action in a state court will have the effect of making it impossible for a fiduciary of a pension plan to carry out its responsibilities under ERISA, the anti-injunction provisions of § 2283 do not prohibit it from enjoining the state court proceedings.

Id.

Similarly, the Second Circuit in *Marshall v. Chase Manhattan Bank,* 558 F.2d 680 (2d Cir. 1977), held that the Anti-Injunction Act did not require dismissal of an action by the Secretary of Labor, under section 502 of ERISA, seeking to enjoin a state court proceeding concerning a plan trustee's account. The Second Circuit explained:

> The superior federal interest sought to be vindicated here is clear from §§ 502 and 514 of the Act [ERISA] as well as its legislative history which establish the congressional intent that the United States regulate the field of employee benefit plans eliminating the threat of conflicting and inconsistent local regulation.

558 F.2d at 683.

Subsequently, in *Gilbert v. Burlington Indus., Inc.,* 765 F.2d 320 (2d Cir. 1985), *aff'd mem. sub nom. Roberts v. Burlington Indus., Inc.,* 477 U.S. 901 (1986), the Second

Circuit again held that ERISA falls within the "expressly authorized" exception to the Anti-Injunction Act. In that case, the plaintiffs had filed a claim with a state administrative agency for severance benefits allegedly owed by their former employer. The agency directed the employer to pay the benefits. A federal district court subsequently enjoined the state agency from enforcing the orders it had entered against the employer. On appeal, the Second Circuit assumed for purposes of its analysis that the Anti-Injunction Act would generally apply to state administrative proceedings, but held that the district court's injunction did not violate the Anti-Injunction Act "because the injunction falls within the Act's exception for actions 'expressly authorized' by federal law." 765 F.2d at 329.

The Third Circuit's holding flatly conflicts with the above decisions from the Sixth and Second Circuits. Had this case arisen in the Sixth or Second Circuits, the result surely would have been different.[15]

The question of whether ERISA falls within the "expressly authorized" exception to the Anti-Injunction Act is an important issue, as this case illustrates. The issue affects many thousands of employee benefit plans throughout this country. It is therefore essential that this Court issue a Writ of Certiorari to resolve the conflict among the circuits on this important issue.

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[15]The Third Circuit's holding is also in conflict with the reported decisions of at least two federal district courts which have addressed the applicability of the Anti-Injunction Act to orders issued under section 502(a)(3) of ERISA. *Senco of Florida, Inc. v. Clark*, 473 F. Supp. 902, 905 (M.D. Fla. 1979) ("Congress must have intended ERISA to come within the 'expressly authorized' exception to the Anti-Injunction Act"); *Cartledge v. Miller*, 457 F. Supp. 1146, 1151-52 (S.D.N.Y. 1978) (section 502(a)(3) of ERISA comes under the "expressly authorized" exception to the Anti-Injunction Act).

CONCLUSION

In order to resolve the conflict among the circuits on this critically important issue of law in the employee benefit area, and to carry out the clear intent of Congress in providing for uniform federal regulation of the employee benefit field, Petitioners respectfully pray that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Dated: December 15, 1989

United States Court of Appeals

FOR THE THIRD CIRCUIT

Nos. 89-3161 & 89-3162

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS; USX CORPORATION, as plan sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, plan administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND

v.

GLENN MUSISKO AND ALL OTHERS SIMILARLY SITUATED to Glenn Musisko, and THE HONORABLE SILVESTRI SILVESTRI in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania

Glenn Musisko, and all others similarly situated to Glenn Musisko, Appellant in No. 89-3161

The Honorable Silvestri Silvestri, Appellant in No. 89-3162

Appeal from the United States District Court for the Western District of Pennsylvania (D.C. Civil No. 87-02364)

Argued July 21, 1989

Before: STAPLETON, SCIRICA, and WEIS, *Circuit Judges*

Filed September 21, 1989

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OPINION OF THE COURT

WEIS, *Circuit Judge.*

This appeal challenges a United States District Court's entry of an injunction and declaratory judgment directing a state court to apply federal law in a pending lawsuit. The state court action is a claim for benefits due under a welfare plan assertedly within the ambit of the Federal

Employee Retirement Income Security Act (ERISA). We conclude that in the circumstances here the district court's orders are barred by the Anti-Injunction Act. Accordingly, we will reverse.

I. THE FACTUAL BACKGROUND

This complicated litigation began in the summer of 1982 when Glenn Musisko, injured in a non-work related automobile accident, filed a simple claim for sickness and accident benefits. As an employee of USX Corporation, Musisko was a participant in the company's Program of Insurance Benefits, negotiated as part of a collective bargaining agreement. Included in the program was a group policy providing for weekly disability payments.

Soon after his accident, Musisko applied for benefits under the policy, but the Equitable Life Assurance Society—the Plan's insurer—notified him that it denied his claim. The insurer explained that the Plan benefits were offset by payments Musisko had received under his no-fault automobile insurance policy. The letter of denial, written on Equitable stationery, advised that no payments would be made "since the benefit paid for wage loss through your auto carrier exceeds the benefit that you would be entitled to receive under" the USX program. Equitable's policy with the United States Steel Company trust fund was a "stop-loss" agreement—essentially a "deductible" arrangement under which the insurer paid claims on the employer's behalf and provided a defense to suits brought by a beneficiary.

A month later, in October 1982, Musisko filed suit in the Court of Common Pleas of Allegheny County, Pennsylvania, to challenge this denial. Musisko named Equitable

as the sole defendant. He later amended his complaint to assert a class action, but certification was held in abeyance.

The Common Pleas Court entered summary judgment against Musisko, and he appealed to the Pennsylvania Superior Court. The appellate court reversed, directing that judgment be entered against Equitable. *Musisko v. Equitable Life Assurance Soc'y*, 344 Pa. Super. 101, 496 A.2d 28 (1985). In its opinion, the Superior Court applied the common law rule of contract construction that an ambiguous term be interpreted against the drafter. That principle led the court to hold that the offset proviso did not clearly exclude coverage for wage losses in excess of that recovered under the automobile insurance policy. The Pennsylvania Supreme Court denied allocatur.

On remand, the Court of Common Pleas certified the case as a class action in January 1987, and 225 USX employees opted into the class. The federal plaintiffs assert that only at this point did they become aware of the Musisko state court litigation. In a letter dated August 24, 1987, Equitable's lawyer wrote to USX counsel advising of the insurer's intention to amend the answer and raise the defense of preemption under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461. The Common Pleas docket, however, records Equitable's withdrawal of its motion to amend its answer on October 23, 1987.

In November 1987, the case now before us began in the district court, with plaintiffs seeking to void the state judgment and to compel ERISA's application to the state lawsuit. The four federal plaintiffs are the United States Steel Corporation Plan for Insurance Benefits; the Plan's sponsor, USX Corporation (formerly United States Steel Corporation); the Plan's administrator, United States Steel

and Carnegie Pension Fund; and United States Steel Insurance Benefit Trust, the source of benefit payments. Plaintiffs sought injunctive and declaratory relief against Musisko, the class claimants, and the state trial judge.

The federal complaint asserts that the Pennsylvania courts violated ERISA by failing to give effect to the statute's preemption provision. *See* 29 U.S.C. § 1144(a). In the district court, plaintiffs contended that the state courts ignored ERISA preemption by permitting Musisko to maintain his cause of action after he neglected to pursue the grievance procedure set out in the Plan and the collective bargaining agreement.[1] Accordingly, plaintiffs argued that ERISA required that the state judgment be set aside.

Plaintiffs also contended that the state courts erred in applying common law rules of construction to the ERISA dispute. They maintained that the theory applied by the Pennsylvania Superior Court—interpreting a contract against the drafter—was a state law principle preempted by ERISA.

The district court agreed that ERISA preempted state law, and issued a declaration to that effect. The court also

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[1]Section 10 of the Plan provides that, in the event a dispute over a claim arises, "the difference may be processed as an insurance grievance under the provisions of the basic labor agreement applicable to insurance grievances."

Section 19 of the collective bargaining agreement sets out the union's grievance procedure, noting that it "shall apply" to the Plan. This section further states that unless a grievance under the Plan is timely appealed, "it shall be deemed to have been settled and no appeal therefrom shall thereafter be taken." Because the allotted appeal time has passed, the federal plaintiffs conclude that Musisko was without a remedy. As a corollary, the federal plaintiffs assert that, in an earlier grievance by another USX worker, the Arbitrators issued a ruling adverse to Musisko's position that would be binding on a subsequent arbitration panel.

enjoined Musisko, the class, and the state trial judge "from proceeding on the matter filed at No. 7797 of 1982, in the Court of Common Pleas of Allegheny County, Pennsylvania, under any law other than ERISA."

In this appeal, Musisko and the state trial judge have collectively asserted numerous theories in support of reversal.[2] We find it necessary to discuss only one, the Anti-Injunction Act, because we consider it dispositive of this appeal.

II. THE HISTORICAL BACKGROUND OF THE ACT

The Anti-Injunction Act reads: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. This statute, with a venerable lineage that postdates the Bill of Rights by a mere two years, is designed to avert needless and unseemly friction between state and federal courts. *Mitchum v. Foster,* 407 U.S. 225, 232-33 (1972); *NLRB v. Nash-Finch Co.,* 404 U.S. 138, 146 (1971); *Leiter Minerals, Inc. v. United States,* 352 U.S. 220, 225 (1957); *Toucey v. New York Life Ins. Co.,* 314 U.S. 118, 129 (1941). Because

[2]Musisko, for himself and all those similarly situated, argues that the federal plaintiffs lacked standing in the district court, and that the requested relief is foreclosed by waiver, laches, unclean hands, equitable estoppel, res judicata, and collateral estoppel. The state judge asserts that the plaintiffs' action fails in the absence of standing and an Article III case or controversy; that the district court lacked constitutional jurisdiction to review a final judgment entered in the state court system; that the district court's order offended the Full Faith and Credit Clause; that the Anti-Injunction Act proscribes federal intervention; that discretionary concepts of federalism and comity compel abstention; and that res judicata and equitable preclusion bar recovery.

the district court's order in this case raises the spectre of just such abrasiveness between the two judicial systems, we turn to this statute and its historical development.

According to James Madison's notes, the delegates to the Constitutional Convention evidently had little hesitancy in approving the concept of a federal judiciary. "[O]n motion to agree to the first clause namely 'Resolved that a National Judiciary be established' It passed in the affirmative nem. con. [none opposed]" 2 *1787: Drafting the U.S. Constitution* 1313 (W. Benton ed. 1986) (notes of June 4, 1787).

The delegates' initial assent, however, proved ephemeral, and a clash between the federalists and antifederalists over Article III erupted when the time came to decide the organization of the new judicial establishment. Satisfied with the commitment of the state courts and firm in the belief that separate national tribunals would be superfluous, the antifederalists opposed the creation of any lower federal courts. The federalists, in contrast, sought the chartering of a complete federal judicial structure in the Constitution itself. *See Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs,* 398 U.S. 281, 285 (1970). *See also* C. McGowan, *The Organization of Judicial Power in the United States* 19-22 (1969).

To reduce opposition to a national judiciary, especially one including inferior tribunals, the delegates authorized in the Constitution only a Supreme Court, reserving for Congress the creation of lower federal courts. U.S. Const. art. III, § 1; *Palmore v. United States,* 411 U.S. 389, 400-01 (1973); *Insurance Co. v. Dunn,* 86 U.S. (19 Wall.) 214, 226 (1873). *See* R. Carp & R. Stidham, *The Federal Courts* 2 (1985). Although this political compromise anticipated the later formulation of federal district courts, the

Founders contemplated that federal jurisdiction would be concurrent in the state courts. As explained during the ratification process, "When . . . we consider the state governments and the national governments, as they truly are, in the light of kindred systems, and as parts of ONE WHOLE, the inference seems to be conclusive, that the state courts would have a concurrent jurisdiction in all cases arising under the laws of the union, where it was not expressly prohibited." *The Federalist* No. 82, at 555 (A. Hamilton) (J. Cooke ed. 1961).

Ratification, however, was not a foregone conclusion. "The judiciary article, which had aroused only relatively minor disagreement in the Convention, became a storm center of controversy in the ratification debates." P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System* 20 (3d ed. 1988). Among the proposed amendments in response to the Convention's draft was "the elimination of any Federal Courts of first instance, or, at all events, the restriction of such original Federal jurisdiction to a Supreme Court with very limited original jurisdiction." *Id.* (quoting Warren, *New Light on the History of the Federal Judiciary Act of 1789,* 37 Harv. L. Rev. 49, 56 (1923)).

This hostility towards infringement on state sovereignty prompted the first Congress to vest only limited jurisdiction in the lower federal courts. The Judiciary Act of 1789 gave no federal tribunal other than the United States Supreme Court the power of direct review over state cases implicating federal rights. Judiciary Act of 1789, § 25, 1 Stat. 73, 85-86. *See* 28 U.S.C. § 1257(a). Indeed, the jurisdiction of the inferior federal courts was so spare that not until 1875 were they given general, but non-exclusive, jurisdiction in federal question cases. *See* Act of Mar. 3,

1875, 18 Stat. 470; *Amalgamated Clothing Workers v. Richman Bros. Co.*, 348 U.S. 511, 518 (1955). *See generally* C. McGowan, *supra*, at 23-29. Before that time, vindication of federal rights was entrusted to the state courts.

To insure the independence of the state courts from the newly-created federal tribunals, Congress in 1793 enacted the predecessor to the present Anti-Injunction Act. *See* M. Redish, *Federal Jurisdiction: Tensions in the Allocation of Judicial Power* 270 (1980). As originally approved, this statute directed: "nor shall a writ of injunction be granted [by a federal court] to stay proceedings in any court of a state." Act of Mar. 2, 1793, § 5, 1 Stat. 335. *See* J. Story, *Commentaries on the Constitution of the United States* § 914 (1833).

The Act was amended in 1874 to read: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." Rev. Stat. § 720 (1875) (codified at 28 U.S.C. § 379 (repealed)). The current language, adopted in 1948 to correct what was perceived as an errant result in *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941), "is but continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflicts between state and federal courts." *Richman Bros.*, 348 U.S. at 518.

The general rule remains today one of non-intervention. The Anti-Injunction Act, "a necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts," represents a "considered judgment as to how to balance the tensions inherent in such a system." *Chick*

Kam Choo v. Exxon Co., 486 U.S. 140, ___, 108 S. Ct. 1684, 1689 (1988).

Inappropriate intervention breeds friction, but federal restraint facilitates the smooth and orderly operation of the dual judicial structure. Providing the means for accomplishing this objective, the Anti-Injunction Act sets out the "lines of demarcation between the two systems." *Atlantic Coast Line*, 398 U.S. at 286. As the Supreme Court has admonished, "Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court." *Id.* at 287. *See Parsons Steel, Inc. v. First of Alabama Bank*, 474 U.S. 518, 525 (1986); *Richman Bros., 348 U.S. at 521.*

A. Elements of the Act

The Anti-Injunction Act applies when (1) a court of the United States (2) grants an injunction (3) to stay proceedings (4) in a state court. *See* 17 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4222 (1988). Elements 1, 2, and 4 are self-evident in this case. An argument may be made, however, that the third element is absent because the district judge did not order a "stay of the state court proceedings" that suspended or terminated the state case. But such a literal construction of the third element mistakes title for effect. The practical result of the district judge's order here was to cast doubt on the effectiveness of the Pennsylvania Superior Court's ruling and on any judgment that might result from it. The district court's order could effectively prevent the state trial judge from proceeding in accordance with the Superior Court's direction. The injunction, by obstructing and interfering

with the state courts' process, thus has the effect of a stay within the meaning of the statute.

The Supreme Court reached a similar conclusion in *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs,* 398 U.S. 281 (1970). There, a state court had enjoined a union from picketing a railroad. The union repaired to federal court, and persuaded the district judge to enjoin the railroad "from giving effect to or availing [itself] of the benefits" of the state court order. The Supreme Court agreed that, for section 2283 purposes, the federal injunction constituted a stay of state court proceedings. "[T]he prohibition of § 2283 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results of a completed state proceeding." *Id.* at 287.

Here, in addition to and as an alternative to its injunction, the district court issued a declaratory judgment "that application of state law to the state court action is preempted by ERISA." This declaratory relief is not insulated from the Anti-Injunction Act's review. The prohibition of section 2283 is not "an anachronistic, minor technicality, easily avoided by mere nomenclature or procedural sleight of hand." *Texas Employers' Ins. Ass'n v. Jackson,* 862 F.2d 505 (5th Cir. 1988), *cert. denied,*___ U.S. ___, 109 S. Ct. 1932 (1989). Where, as here, declaratory relief would produce the same effect as an injunction, a declaratory judgment is barred if section 2283 would have prohibited an injunction. *Thiokol Chemical Corp. v. Burlington Indus., Inc.,* 448 F.2d 1328, 1332 (3d Cir. 1971), *cert. denied,* 404 U.S. 1019 (1972). *See* 17 C. Wright, A. Miller, & E. Cooper, *supra,* § 4222, at 503-04.

B. The "Expressly Authorized" Exception

The district court's order appealed from contains the four Anti-Injunction Act elements. Our next step, then, is to determine whether the order comes within any of the three exceptions provided in the statute.

The absolute bar against federal injunctive measures contemplated by the Act is "qualified only by specifically defined exceptions," *Richman Bros. Co.*, 348 U.S. at 516,—exceptions to be read narrowly: not "enlarged by loose statutory construction," *Chick Kam Choo*, 486 U.S. at ___, 108 S. Ct. at 1689, or "whittled away by judicial improvisation," *Richman Bros.*, 348 U.S. at 514. Moreover, "[a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Atlantic Coast Lines*, 398 U.S. at 297. Unless one of the exceptions governs the order, federal courts are "absolute[ly] prohibit[ed]" from enjoining a state judicial proceeding. *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977); *Mitchum*, 407 U.S. at 228-29.

The Anti-Injunction Act sets out three circumstances in which its bar will not apply: where the injunction (1) is expressly authorized by Congress; (2) is necessary in aid of the federal court's jurisdiction; or (3) is necessary to protect or effectuate the federal court's judgment. 28 U.S.C. § 2283. Only the first exception—expressly authorized by Congress—is asserted here.

In the leading case construing the expressly authorized exception, *Mitchum v. Foster*, 407 U.S. 225 (1972), the Court commented that the preempting federal statute need

not contain a direct reference to section 2283 nor specifically provide for the district judge's issuance of an injunction against state proceedings. *Id.* at 237. *See Richman Bros.*, 348 U.S. at 516 (no prescribed formula required). Instead, the pertinent test is "whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding." *Mitchum*, 407 U.S. at 238.

In *Mitchum* the Court ruled that 42 U.S.C. § 1983 expressly authorized federal injunctions against state courts and thus was an exception to the Anti-Injunction Act. In reaching that result, the Court relied principally on section 1983's legislative history, which chronicled explicit congressional concern over the failure of state courts to enforce constitutional rights during the Reconstruction Era.

Five years after *Mitchum* was decided, the Court in *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623 (1977), held that the Clayton Act, 15 U.S.C. § 26, was not an express exception to the Anti-Injunction Act. In a plurality opinion, four Justices noted that the clear congressional distrust with state court enforcement apparent in section 1983's legislative history was "wholly lacking" in the antitrust context. *Id.* at 632-33 (plurality opinion).[3]

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[3]The Court in *Mitchum* noted six instances of permissible federal injunctions against state proceedings: (1) removal from state to federal court; (2) limitations on shipowner liability; (3) federal interpleader actions; (4) farm mortgages; (5) federal habeas corpus proceedings; and (6) price control legislation. *Mitchum*, 407 U.S. at 234-35 nn. 12-17.

In addition, the Courts of Appeals have ruled that the Longshore and Harbor Workers' Compensation Act is not an expressly authorized exception, Texas Employers' Ins. Ass'n. v. Jackson, 862 F.2d 491, 498

(Continued on next page)

The Supreme Court has not had the occasion to consider whether Congress expressly intended ERISA to authorize federal injunctions against state court proceedings. The question, then, is an open one whose resolution necessitates a review of the pertinent ERISA provisions.

ERISA authorizes a beneficiary of a plan to bring a civil action to recover benefits due. 29 U.S.C. § 1132(a)(1)(B). Such suits may be brought either in a state court of competent jurisdiction or in a federal district court. 29 U.S.C. § 1132(e)(1). Musisko instituted just such a civil action in the Court of Common Pleas, where Judge Silvestri was entitled to exercise his concurrent state court jurisdiction.

ERISA also authorizes participants, beneficiaries, and fiduciaries to file a civil action "to enjoin any act or practice which violates any provision of this subchapter." 29 U.S.C. § 1132(a)(3). These actions must be brought in the United States District Courts, which have exclusive jurisdiction in such cases. 29 U.S.C. § 1132(e)(1).

Conspicuously absent from the language of this ERISA injunction provision is any suggestion of its use by federal courts against state tribunals. The lack of a specific reference is not determinative, but in such absence the legislative history must contain adequate proof that "Congress recognized and intended the statute to authorize injunction of state-court proceedings." *Vendo Co.*, 433 U.S. at 633 (plurality opinion).

(Continued)

(5th Cir. 1988), *cert. denied*, ___ U.S. ___ 109 S. Ct. 1932 (1989), nor are the federal securities laws, Piambino v. Bailey, 610 F.2d 1306, 1331-33 (5th Cir.), *cert. denied*, 449 U.S. 1011 (1980); Roth v. Bank of the Commonwealth, 583 F.2d 527, 531-35 (6th Cir. 1978), *cert. dismissed*, 442 U.S. 925 (1979).

The legislative history of 29 U.S.C. § 1132(a)(3) is replete with references to Congress' desire that beneficiaries have adequate remedies to vindicate their rights under an employee benefit plan. *See, e.g.,* H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 326, *reprinted* in 3 Committee Print, *Legislative History the Employee Retirement Income Security Act of 1974* 4593 (1976) [hereinafter *Legislative History*] and 1974 U.S. Code Cong. & Admin. News 4639, 5106; S. Rep. No. 383, 93d Cong., 1st Sess. 10 (1973), *reprinted in 1 Legislative History* at 1078 and 1974 U.S. Code Cong. & Admin. News at 4898. *See* 119 Cong. Rec. 3,0005 (Sept. 18, 1973) (statement of Sen. Williams), *reprinted in 2 Legislative History* at 1604 ("For the first time, plan participants would also be given the right to seek appropriate relief in both Federal and State courts against fiduciaries for violations committed by them with respect to a pension plan").

Nowhere in the comprehensive legislative record is there any indication that Congress intended to authorize injunctions against state courts. Indeed, the very act of delegating concurrent jurisdiction to the state courts for resolution of beneficiaries' claims is evidence of Congress' satisfaction that state tribunals would fairly and competently adjudicate such cases. In contrast to the misgivings about state courts articulated in section 1983's legislative history, *see Mitchum,* 407 U.S. at 238-42, the grant of jurisdiction to the state judiciaries to resolve ERISA claims represents a congressional vote of confidence.

The ERISA enforcement section's language and its legislative history are inadequate to demonstrate a congressional desire to defeat the bar of section 2283. The

federal plaintiffs have failed to produce "sufficient evidence in the legislative history demonstrating that Congress recognized and intended the statute to authorize injunction of state court proceedings." *Vendo Co.*, 433 U.S. at 633 (plurality opinion). The Anti-Injunction Act was directed at preventing a federal "appellate review function in litigation in which the state and federal courts had equal competence." *Id.* at 658 (Stevens, J., dissenting). The district court's order attempts to exercise just such an impermissible review function in this case.

Plaintiffs cite *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), and *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987), as support for their assertion that ERISA was intended to entirely preempt the field of employee benefit plans. *See also Shiffler v. Equitable Life Assurance Soc'y*, 838 F.2d 78, 81 (3d Cir. 1988). There are some exceptions to that proposition, *see Mackey v. Lanier Collections Agency & Serv., Inc.*, ___ U.S. ___, 108 S. Ct. 2182 (1988); *FMC Corp. v. Holliday*, No. 89-3226, slip op. (3d Cir. Sept. 11, 1989), but even if it were all-inclusive, the fact of preemption does not control application of the Anti-Injunction Act.

A federal court may not enjoin state court proceedings merely because they "invade an area pre-empted by federal law even when the interference is unmistakably clear," *Chick Kam Choo*, 486 U.S. at ___, 108 S. Ct. at 1691, or where the "incursion upon a federally preempted domain dislocates the federal scheme as a whole," *Richman Bros.*, 348 U.S. at 517. The fact that the state proceeding presents a preemption issue does not alter the respect due the state tribunal. "[T]he proper course is to seek resolution of that

issue by the state court." *Chick Kam Choo,* 486 U.S. at , 108 S. Ct. at 1691.[4]

The federal plaintiffs also rely on several cases applying the Anti-Injunction Act in the ERISA context. In *General Motors Corp. v. Buha,* 623 F.2d 455 (6th Cir. 1980), the Court of Appeals for the Sixth Circuit held, in a case involving state garnishment proceedings, that ERISA's enforcement section was an exception to the Anti-Injunction Act. In that case a fiduciary, the trustee of an employee pension plan, instituted a federal suit to challenge the enforcement of a state court's writ of garnishment obtained by a beneficiary's creditor. The Court of Appeals noted that the fiduciary was not a party to the state court proceedings, and could not have raised its objections to garnishment there.

On those facts, the Court of Appeals concluded that where a state court action makes it impossible for a fiduciary to carry out its responsibilities under ERISA, the Anti-Injunction Act does not apply. *Id.* at 459. Although we have some reservations about that ruling, we are convinced that the important factual differences between that case and this one—particularly in the type of plan and the nature of the relationship between the federal plaintiffs and their insurer Equitable—make *Buha* distinguishable.

The Court of Appeals for the Second Circuit in *Gilbert v. Burlington Indus., Inc.,* 765 F.2d 320 (2d Cir. 1985), *aff'd,* 477 U.S. 901 (1986), held that the Anti-Injunction Act did not preclude a plan administrator from obtaining

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[4]The Pennsylvania courts have demonstrated no reluctance in meeting their obligation to follow federal law. In several opinions, the Superior Court has acknowledged and applied ERISA preemption. *See, e.g.,* Smith v. Crowder Jr. Co., 280 Pa. Super. 626, 421 A.2d 1107 (1980); Goldberg v. Caplan, 277 Pa. Super. 47, 419 A.2d 653 (1980).

injunctive relief against a state administrative proceeding. Without discussion, the Court concluded that even if section 2283 applied to administrative proceedings, which are often circumstance dependent, *see New Orleans Pub. Serv., Inc. v. Council of City of New Orleans,* ___ U.S. ___, 109 S.Ct. 2506, 2517-20 (1989), the requested injunction fell within the expressly authorized exception. *Id.* at 329. In the absence of any explanation from the Court why it reached that conclusion, we are not swayed by it.

We do not consider the remaining case citations persuasive in the circumstances here. The Court of Appeals for the Second Circuit in another case acknowledged the *Buha* ruling in an ERISA appeal, but resolved a claim by a beneficiary on abstention grounds without having to consider section 2283. *Levy v. Lewis,* 635 F.2d 960, 967 (2d Cir. 1980). In a second phase of the case, the Court denied a claim for breach of fiduciary duties on the merits. *Id.* at 967-68. *See also Senco of Florida, Inc. v. Clark,* 473 F. Supp. 902 (M.D. Fla. 1979) (injunction denied on merits); *Cartledge v. Miller,* 457 F. Supp. 1146 (S.D.N.Y. 1978) (same).

C. The "Stranger" Exclusion

Finally, the federal plaintiffs suggest, somewhat tentatively and obliquely, that they are "strangers to the state court litigation," and consequently, that section 2283 is not applicable. This exclusion from the Anti-Injunction Act was recognized in *County of Imperial v. Munoz,* 449 U.S. 54 (1980), and *Hale v. Bimco Trading, Inc.,* 306 U.S. 375 (1939). The Supreme Court explained in those opinions that the Anti-Injunction Act will not apply if the federal litigants were "strangers" to the state court proceedings. *Munoz,* 449 U.S. at 59-60; *Hale,* 306 U.S. at 377-78.

The term "stranger" describes a litigant who, neither a party nor in privity with a party to the state court action, is not bound by those previous proceedings. *Munoz v. County of Imperial,* 667 F.2d 811, 814-15 (9th Cir.) (on remand from Supreme Court), *cert. denied,* 459 U.S. 825 (1982); *Garcia v. Bauza-Salas,* 862 F.2d 905, 908 (1st Cir. 1988). The collateral estoppel concept of "privity" generally guides the decision whether a federal litigant is a "stranger" under the Anti-Injunction Act. *See Pelfresne v. Village of Williams Bay,* 865 F.2d 877, 881 (7th Cir. 1989).

In *Munoz and Bimco Trading,* the injunctive type of state court relief with effects extending beyond the immediate parties was substantially different from the monetary damages sought in the state court here. If their funds are not at risk in the state court proceedings, it is dubious that the federal plaintiffs can establish the personal stake required to give them Article III standing. On the other hand, if federal court standing is based on liability for financial loss incurred in the state court suit, that same exposure is an indicia of privity.

Consequently, we have serious reservations that the stranger exclusion is applicable in a situation where the federal plaintiffs interest in enjoining the state damage suit depends entirely on whether they are in privity with the state defendant. Assuming, without deciding the exclusion's applicability, we conclude that Equitable is in privity with the federal plaintiffs and the Anti-Injunction Act therefore applies.

The federal plaintiffs here were not parties to the state court proceedings but the record establishes privity in connection with the issues relevant to the Musisko claims. The Restatement of Judgments summarizes that a litigant "who is not a party to an action but who is represented by

a party is bound by and entitled to the benefits of a judgment as though he were a party. A person is represented by a party who is . . . [i]nvested by the person with authority to represent him in an action . . . . " Restatement (Second) of Judgments § 41(1)(b) (1982). This principle rests not only on the beneficiary-fiduciary relationship, but extends to the principal-agency relationship as well. *See Temple v. Lumber Mut. Casualty Ins. Co.*, 250 F.2d 748, 752 (3d Cir. 1958) (insurer in privity with insured); *Dally v. Pennsylvania Threshermen & Farmers' Mut. Casualty Ins. Co.*, 374 Pa. 476, 97 A.2d 795, 796 (1953) (insurer bound by proceeding defended by insured).

The Equitable policy provides that the insurance company "shall have the right to determine the amount of benefits, if any, payable to an employee from the Policyholder's funds and the Policyholder agrees to accept and follow such determination." In the event of legal action by an employee for Plan benefits, Equitable is contractually obliged to "undertake on behalf of the Policyholder or the Employer the defense of such action and shall pay any judgment rendered therein." The policy grants Equitable the right to settle any such legal action, "when it deems it expedient to do so," and directs reimbursement to Equitable "for the portion of any such judgment or settlement paid from the Society's funds which represents an amount of benefits payable from the Policyholder's funds."

The facts of record thus establish that Equitable was entitled to act on behalf of the federal plaintiffs in the Musisko matter, and was bound to assert their interests in defending against the claims. To the extent that the claims' value do not exceed the "deductible" amount, the payments must ultimately be paid with the trust fund assets. Under the unambiguous terms of the policy, the federal

plaintiffs would be bound by an adverse judgment against Equitable in the state court litigation; they have produced no proof nor contended otherwise. We, therefore, accept Musisko's assertion that privity exists between the federal plaintiffs and Equitable. Plaintiffs here are not strangers to the state court litigation, and are not outside the ambit of the Anti-Injunction Act.

D. Conclusion

To summarize, we have determined that the state court had concurrent jurisdiction over the claim Musisko raised; that ERISA's legislative history reveals no congressional desire that injunctions issue against state courts; and that no bar precluded presentation of the federal plaintiffs' position in the state courts. Accordingly, we hold that the Anti-Injunction Act proscribes the relief awarded here.[5]

The order of the district court will be reversed and the case remanded with instructions that judgment be entered for defendants Musisko, the class, and the state trial judge.

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[5]Because we find the Anti-Injunction Act's bar to be dispositive, we need not address the likely determinative effect the abstention doctrine might have in this case. *See* New Orleans Pub. Serv., Inc. v. Council of City of New Orleans, ___ U.S. ___,109 S.Ct. 2506 (1989); Pennzoil Co. v. Texaco, Inc., 481 U.S. 1(1987); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Huffman v. Pursue, Ltd., 420 U.S. 592 (1975); Younger v. Harris, 401 U.S. 37 (1971).

Nor need we assess the possible applicability of the *Rooker-Feldman* doctrine—if the federal claims presented to the district court are "inextricably intertwined" with the merits of a judgment rendered by the state court, "then the district court is in essence being called upon to review the state-court decision. This the district court may not do." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483-84 n.16 (1983). *See* Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923).

A True Copy:

Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS; USX CORPORATION, as Plan Sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, Plan Administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND, Plaintiffs, vs. GLENN MUSISKO, and all others similarly situated to Glenn Musisko; and THE HONORABLE SILVESTRI SILVESTRI, in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania, Defendants.	**CIVIL ACTION NO. 87-2364**

MEMORANDUM OPINION

BLOCH, District J.

This is an action brought pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1132(a)(3)

(ERISA), by four plaintiffs seeking declaratory and injunctive relief. The four plaintiffs are USX Corporation, which is the plan sponsor of an ERISA-regulated employee welfare benefit plan; United States Steel Corporation Plan for Employees Insurance Benefits, which is the actual plan; United States Steel and Carnegie Pension Fund, which is the plan administrator; and United States Steel Insurance Benefit Trust Fund, which provides the sickness and accident benefits to certain USX employees (collectively USX or plaintiffs). Defendants are Glenn Musisko, a USX employee who is the plaintiff and class representative in a civil action filed in the Court of Common Pleas of Allegheny County to recover certain wage loss benefits under USX's group sickness and accident plan, and the Honorable Silvestri Silvestri, the Judge presiding over that state court action.

I. Background

Glenn Musisko was injured in a non-work related automobile accident on July 25, 1982. At that time, Musisko was enrolled in USX's Program of Insurance Benefits (PIB), an employee benefit plan providing sickness and accident benefits. USX was the administrator of the plan. Equitable Life Assurance Society (Equitable) provided "stop-loss" insurance to the plan. Pursuant to this "stop-loss" insurance policy between USX and Equitable, Equitable is liable to the plan only for amounts in excess of an annual threshold amount.

Musisko submitted his claim for work loss benefits under the PIB to Equitable which was authorized to determine whether to pay claimants. In August, 1982, Equitable denied Musisko's claim for benefits. The denial was based upon an offset provision in § 9.37 of the PIB which entitles

the insurer to a credit for the amount of benefits which a participant receives from another insurer. Musisko had already received from his no-fault automobile insurance carrier an amount greater than the maximum amount of work loss benefits available under the PIB.

On October 28, 1982, Musisko filed an insurance contract action against Equitable in the arbitration section of the Court of Common Pleas of Allegheny County, seeking to recover the denied weekly accident benefits. The Court of Common Pleas determined that the offset provision was clear and unambiguous, but it left to an arbitration panel the question whether Musisko was aware of and understood the limitation of coverage under the policy. The arbitration panel entered an award in favor of Musisko in the sum of $10,000. Equitable appealed that arbitration decision to the Court of Common Pleas. In the meantime, Musisko filed and was granted a motion to amend his complaint to a class action. On appeal to the Court of Common Pleas, Judge Silvestri reversed the-arbitration panel's award and granted summary judgment to Equitable.

The Pennsylvania Superior Court reversed Judge Silvestri's ruling and remanded the case for entry of judgment in favor of Musisko. *Musisko v. Equitable Life Assurance Society,* 496 A.2d 28 (Penn. Super. 1985). The Superior Court held that the language of the policy's offset provision did not clearly and unambiguously exclude Musisko's requested coverage and, citing to Pennsylvania's common law principle of construing an ambiguous contract against the drafter, it construed the offset provision against Equitable. On February 4, 1986, the Pennsylvania Supreme Court denied Equitable's petition for allowance of appeal. On remand from the Superior Court, Judge

Silvestri certified a plaintiff class and named Musisko as the class representative.

On November 5, 1987, USX, which was not a party to the state court action, filed the instant action, seeking to enjoin the state court proceedings and to obtain a declaratory judgment that ERISA preempts the state law as applied to Musisko's dispute. Judge Silvestri stayed the state court proceedings, *sua sponte,* pending final disposition of this action. At that time, the only issues remaining in the state court action were qualification of class members and damages.

II. Pre-emption

Plaintiffs, one of whom is the fiduciary of USX's ERISA-regulated employee welfare benefit plan, brought this action pursuant to § 1132(a)(3) of ERISA, which provides:

> A civil action may be brought by a . . . fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

Defendant Musisko characterized his claim as being under state insurance contract law. The state trial and appellate courts rendered their decisions on the basis of state law. USX argues that regardless of how Musisko characterized his claim, since he is claiming benefits from an ERISA-regulation plan, the application of state law to his claim violates ERISA's state law pre-emption provision, 28 U.S.C. § 1144(a).

Section 1144 contains three clauses commonly referred to as the pre-emption clause, the savings clause and the deemer clause.[1] *Shiffler v. Equitable Life Assur. Soc. of U.S.*, 838 F.2d 78, 81 (3d Cir. 1988). The Supreme Court recently described the interrelationship of these provisions:

> If a state law "relate(s) to . . . employee benefit plan(s)," it is pre-empted. § 514(a) [29 U.S.C. § 1144(a)]. The saving clause accepts from the pre-emption clause laws that "regulat[e] insurance." § 514(b)(2)(A) [29 U.S.C. § 1144(b)(2)(A)]. The deemer clause makes clear that a state law that "purport[s] to regulate insurance" cannot deem an

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[1]The pre-emption clause provides:

> Except as provided in subsection (b) of this section [the saving clause], the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . .

§ 514(a), 29 U.S.C. § 1144(a).

The saving clause reads:

> Except as provided in subparagraph (B) the deemer clause, nothing in this subchapter shall be construed to exempt or relieve any person from any law of any state which regulates insurance, banking, or securities.

§ 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A).

Finally, the deemer clause states:

> Neither an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

§ 514(b)(2)(B), 25 U.S.C. § 1144(b)(2)(B).

employee benefit plan to be an insurance company. § 514(b)(2)(B) [29 U.S.C. § 1144(b)(2)(B)].

Pilot Life Insurance Co. v. Dedeaux, ___ U.S. ___, 107 S.Ct. 1549, 1552 (1987). The Supreme Court has repeatedly noted the expansive sweep of ERISA's pre-emption clause. *Id.* at 1553; *Metropolitan Life Insurance Co. v. Massachusetts,* 471 U.S. 724, 759 (1985). Specifically, the phrase "relate to" has been given the broadest common sense meaning, such that a state law "relates to" a benefit plan if it has a connection with or reference to such a plan. *Pilot Life,* 107 S.Ct. at 1553. In addition, the Supreme Court has emphasized that the pre-emption clause is not limited to state laws specifically designed to affect employee benefit plans. *Shaw v. Delta Airlines, Inc.,* 463 U.S. 85, 98 (1983).

Musisko's claim undoubtedly "relates to" an employee benefit plan since his goal is to recover accident benefits claimed under the PIB. *Shiffler,* 838 F.2d at 81-82. The plaintiff in *Shiffler* filed a complaint in the Court of Common Pleas for Philadelphia County, stating various contract and tort claims against the administrator and insurer of her deceased husband's employee benefit plans. The Third Circuit held that although plaintiff attempted to characterize her claims as setting forth state common law causes of action, they clearly related to her husband's employee benefit plans since her goal was to recover the proceeds under those plans. *Id.* Likewise, defendant Musisko's attempt to plead his case as raising a state insurance contract claim is simply not effective to obviate the necessarily federal character of his action. *See Metropolitan Life Insurance Co. v. Taylor,* ___ U.S. ___, 107 S.Ct. 1542, 1548 (1987).

Further, the common law principle of construing an ambiguous term against the drafter, although not specifically designed to affect employee benefit plans, relates to the plan in this case since it was used to interpret the offset provision of Musisko's benefit plan. Therefore, to the extent that Pennsylvania recognizes the cause of action alleged by defendant Musisko against Equitable, his claim is pre-empted by ERISA.

Accordingly, the defendants Glenn Musisko, and all others similarly situated to Glenn Musisko, and The Honorable Silvestri Silvestri, in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania, are enjoined from proceeding on the matter filed at No. 7797 of 1982, in the Court of Common Pleas of Allegheny County, Pennsylvania, under any law other than ERISA.

An appropriate Order will be issued.

/s/ ALAN N. BLOCH
United States District Judge

Dated: February 7, 1989.

cc: Counsel of record.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS; USX CORPORATION, as Plan Sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, Plan Administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND, Plaintiffs, vs. GLENN MUSISKO, and all others similarly situated to Glenn Musisko; and THE HONORABLE SILVESTRI SILVESTRI, in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania, Defendants.	**CIVIL ACTION NO. 87-2364**

ORDER

AND NOW, this 7th day of February, 1989, upon consideration of the parties' cross-motions for summary judgment and for the reasons set forth in this Court's Memorandum Opinion filed herewith,

This Court hereby DECLARES that application of state law to the state court action is pre-empted by ERISA.

Therefore, IT IS HEREBY ORDERED that defendants Glenn Musisko, and all others similarly situated to Glenn Musisko, and The Honorable Silvestri Silvestri, in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania, are ENJOINED from proceeding on the matter filed at No. 7797 of 1982, in the Court of Common Pleas of Allegheny County, Pennsylvania, under any law other than ERISA.

/s/ ALAN N. BLOCH
United States District Judge

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No. 89-952

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS; USX CORPORATION, as plan sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, plan administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND,

Petitioners,

v.

GLENN MUSISKO AND ALL OTHERS SIMILARLY SITUATED to Glenn Musisko, and THE HONORABLE SILVESTRI SILVESTRI in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS MUSISKO AND CLASS

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COUNTERSTATEMENT OF THE CASE

On July 25, 1982, Glenn Musisko, a U.S. Steel Employee, was severely injured in a non-work related automobile accident. At the time, he was covered under a Program of Insurance Benefits issued by Equitable Life Assurance Society, (hereafter Equitable) to U.S. Steel employees (Ex. "T", App. 113a).

Under the Equitable Insurance policy in question at page 102 and at page 3 of the FOREWORD, Respondent Musisko was permitted to file an action at law to recover benefits alleged to be due under the policy (App. 116a, 124a).

Equitable denied Respondent Musisko's claim by letter written to Musisko on September 27, 1982, a copy of

which was sent to U.S. Steel management representative, Bob Yost (Ex. "B", App. 46a, Ex. "P", App. 109a).

As a result of the denial by Equitable, of Respondent's claim for benefits under his policy, Musisko filed suit against Equitable in the Court of Common Pleas of Allegheny County, Pennsylvania (hereafter State Court) on October 28, 1982 (Ex. "A", App. 40a). Thereafter, on June 22, 1983, the case proceeded to trial on the merits, wherein a U.S. Steel management employee, one Joseph Jenkins, testified as an expert witness on behalf of Equitable (Ex. "S", App. 112a, 137a). After an award for Musisko, summary judgment was granted in favor of Equitable and on appeal to the Pennsylvania Superior Court, the case

was remanded for ..."entry of judgment in favor of appellant, Glen J. Musisko." Musisko v. Equitable Life Assurance Society, 344 Pa. Super. 101, 496 A.2d 28, at 31, (1985) (App. 47a). The Superior Court of Pennsylvania held that section 9.37 of the PIB group policy at issue, did not preclude Musisko's claim for wage loss under the policy in question, as long as same did not exceed the total amount of actual wage loss sustained by Musisko including the amount of payments made under his automobile insurance policy. The Court concluded that the section in dispute was ..."susceptible to another reasonable interpretation." Musisko, Id. at 31. The case was appealed to the Pennsylvania Supreme Court on the issue

of Equitable's liability under the policy, and allocatur was denied (Ex. "D", App. 51a).

After extensive discovery following remand to the State Trial Court, the case was certified as a class action on January 8, 1987 and approximately 225 U.S. Steel employees opted into the class (Ex. "I"and"J", App. 60a, 69a). After the close of discovery, on or about September 1, 1987, Equitable was forwarded a list of all class members entitled to receive benefits, along with the amounts to which they were entitled, including interest at 6% simple.

Throughout the tortured procedural and substantive history of the State Court action (see Ex. "A" of

Musisko's Motion To Dismiss U.S.X.'s Complaint against Respondent Musisko and Class filed in the United States District Court on November 17, 1987 (App. 29a and Ex. "A" App. 40a), through the date of November 10, 1987 (the date of Petitioners' Federal suit), the State Court action proceeded through a trial on the merits which resulted in an award for Musisko, one set of preliminary objections filed by Equitable and dismissed, four Motions for Summary Judgment, two appeals to the Pennsylvania Superior Court, one Petition for Allowance of Appeal to the Pennsylvania Supreme Court on the issue of Equitable's liability which was denied, a certification hearing on the class action aspects of the case and exten-

sive discovery from which approximately 225 class members opted into the class, which proceedings covered a period of over five years (Ex. "A", App. 40a).

During the above five year period in which discovery was supervised by U.S. Steel Corporation representatives including their attorney and supervisory personnel in different parts of the State of Pennsylvania, not once did Equitable petition to remove the State Court action to Federal Court, attempt to join Federal Plaintiffs (Petitioners herein) as additional defendants in State Court, have Federal Plaintiffs petition to intervene in the State Court proceedings, pursuant to applicable Pennsylvania rules of civil procedure or raise any of the requests

for relief which Petitioners raised in their Federal suit filed on November 6, 1987.

As a matter of fact, on November 6, 1987, while the State Court parties were at a status conference scheduled by The Honorable Silvestri Silvestri, Respondent herein, to determine the procedure for collecting Musisko's and his class members' benefits in the concluding State Court action, Judge Silvestri informed all counsel that he had been served that morning with Petitioners' Federal Complaint and would be turning over the papers to the Pennsylvania Supreme Court Administrative Office for apporpriate legal representation. Thereafter, Judge Silvestri issued a stay order on

November 10, 1987 (Ex. "K", App. 74a), and the State Court proceedings have not moved forward since that time.

On November 5, 1987, Petitioners filed their Federal suit requesting that the State Court action be permanently enjoined from any further proceedings and that a declaratory judgment issue rendering the Pennsylvania Superior Court decision..."null and void pursuant to the Supremacy Clause of the United States Constitution;" (App. 26a).

On November 17, 1987, Respondent Musisko and his Class filed a MOTION TO DISMISS COMPLAINT pursuant to Federal Rule 12(b) raising the following defenses pursuant thereto; Petitioners' lack of standing; waiver;

laches; unclean hands; equitable estoppel; res judicata; collateral estoppel; comity and federalism; lack of timely removal; all timely briefed (App. 29a).

Thereafter, all parties filed respective Motions For Summary Judgments (App. 85a, 91a, 95a) with accompanying briefs and the United States District Court assigned the case to a United States Magistrate who, after oral argument, issued a REPORT AND RECOMMENDATION on September 7, 1988, denying Petitioners' Motion For Summary Judgment and granting the Motions For Summary Judgment of Respondents Musisko and Class and The Honorable Silvestri Silvestri, based upon the factual predicate of the case as set forth above and on the basis of the doctrine of abstention (App. 150a).

Following Petitioners' objections to MAGISTRATE'S REPORT AND RECOMMENDATION, the United States District Court did not adopt same, refused to grant Respondents' Motions To Dismiss Petitioners' Complaint or Respondents' respective Motions for Summary Judgment and on February 7, 1989, entered an Order enjoining Glenn Musisko and his Class and The Honorable Silvestri Silvestri, Respondents herein, ..."from proceeding on the matter filed at 7797 of 1982, in the Court of Common Pleas of Allegheny County, Pennsylvania, under any law other than ERISA." (App. 156a).

Thereafter, an appeal was taken to the UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT which reversed the District Court and remanded the case with

instructions..."that judgment be entered for defendants Musisko, the class, and the state trial judge." (Petitioners' Appendix A, 21a)

Although Respondents Musisko and Class adopt the sound reasoning of the Opinion of the UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, in toto, holding that the Anti-Injunction Act barred the District Court's order enjoining the State Court action for the reasons set forth therein, Respondents assert the following additional reasons why this case should not be reviewed by this Court.

Although, as set forth in the Opinion of the Court below, there were nine other defenses raised by Respondents Musisko and Class, to Petitioners' prayer

for declaratory and injunctive relief, based upon the factual predicate of the case at bar set forth above, the Court found it necessary to discuss only one as dispositive of Respondents' appeal, the Anti-Injunction Act, U.S. Steel v. Musisko, Nos. 89-3161 and 89-3162, slip op. p.6,f.n. 2 (3d Cir. Sept. 21, 1989). However, these defenses, many of which rest on an adequate non-federal basis, could properly have served as the reason for reversal of the District Court's order and the Opinion of the UNITED STATES COURT OF APPEALS instructing that ..."judgment be entered for defendants Musisko, the class, and the state trial judge."

As noted in footnote five of the Court of Appeals Opinion, U.S. Steel

v. Musisko, Nos. 89-3161 and 89-3162, slip op. 21 (3d. Cir. Sept. 21, 1989), the abstention doctrine (found by the United States Magistrate as controlling) could well have served as the basis for reversal of the Order of the District Court (see U.S. Steel Id. slip op. f.n. 5, p. 21, and MAGISTRATES REPORT AND RECOMMENDATION App. 150a).

As a result of the lower Court's holding that the Anti-Injunction Act's bar was dispositive, the Court merely mentioned in passing the possible applicability of the Rooker-Feldman doctrine, where federal claims are "inextricably intertwined" with the merits of a judgment rendered by a State Court and the District Court is in essence being called upon to review

the State Court decision. (see U.S. Steel Id. slip op. f.n. 5, p. 21 and Rooker v. Fidelity Trust Co. 263 U.S. 413 (1923). In the case at bar, the Pennsylvania Superior Court directed... "entry of judgment in favor of appellant,Glen J. Musisko", Musisko v. Equitable Life, supra, at p. 31, on the issue of the merits, the Pennsylvania Supreme Court denied allocatur and thus the Pennsylvania Superior Court judgment was the law of the State Court proceeding. As set forth in the COUNTERSTATEMENT OF THE CASE, Petitioners' Complaint sought to have the Superior Court decision declared null and void (App. 26a). "This the district court may not do." District of Columbia

Court of Appeals v. Feldman, 460 U.S. 462, 483-84 n. 16 (1983).

Thus, based upon the factual predicate of the case set forth above, the Opinion of the United States Court of Appeals for the Third Circuit could have been rendered on the basis of Petitioners' lack of standing; waiver; laches; unclean hands; equitable estoppel; res judicata; collateral estoppel; comity and federalism, or lack of timely removal and still had the same effect upon the order of the District Court which was reversed (see U.S. Steel, supra, slip op. p. 6, f.n. 2, 1989).

The UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT found as a matter of the factual record that

Equitable (State Court Defendant), the insurer representing Petitioners throughout the State Court proceedings, was in privity with Federal Plaintiffs (Petitioner), that Federal Plaintiffs were not strangers to the state court litigation, as all of the Affidavits of record disclose (see Affidavits of Joseph Jenkins, App. 128a and 132a and section 8 of Agreement between Equitable and U.S. Steel App. 104a) and therefore would be bound by the final judgment of the Pennsylvania Superior Court, the highest State Appellate Court which considered the case on its merits.

The policy between Equitable and Petitioners provides that Equitable ..."shall have the right to determine the amount of benefits, if any, payable

to an employee from the Policyholder's funds and the Policyholder agrees to accept and follow such determination." In the event of legal action by an employee for benefits under the Plan, Equitable..."shall undertake on behalf of the Policyholder or the Employer the defense of such action and shall pay any judgment rendered therein." The policy also permits Equitable to "...settle any such action when it deems it expedient to do so." (App. 104a) Thus, Plaintiff-Petitioners have delegated to their insurer the right to do everything Equitable did in State Court and what Equitable did in State Court was eventually to bind Petitioners to the judgment of the highest State Appellate Court which

considered the case on its merits.

In effect, Plaintiff-Petitioners are asking for a review of the underlying cause of action and final decision on the merits rendered by the Pennsylvania Superior Court, under what Respondents respectfully suggest, is the misguided assumption that ERISA and federal case law permits same to be done. Neither Pilot Life Insurance Company v. Dedeaux, 481 U.S. 41 (1987), nor Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987), sanction this result.

In Pilot Life, Id., Plaintiff filed a diversity action against Defendant, Pilot Life Ins. Co., for tortious breach of contract, breach of fiduciary duties, fraud in the inducement, general damages for mental and

emotional distress and punitive and exemplary damages, none of which causes of action were available to him under ERISA. This Court concluded that, "ERISA's civil enforcement remedies were intended to be exclusive." Pilot Life, Id. at 1557. This Court then quoted the conference report of ERISA describing the civil enforcement provision of Section 502(a) which stated:

> "[W]ith respect to suits to enforce benefit rights under the plan or to recover benefits under the plan which do not involve application of the title 1 provisions, they may be brought not only in U. S. District Courts, but also in state courts of competent jurisdiction..."

Thus, Respondents submit that ERISA does not preclude State Court actions as long as the remedies sought are not something that is otherwise prevented by ERISA's civil enforcement

remedies. (ERISA provides,

> "State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section." ERISA §502(e)(1),29 U.S.C. §1132(e)(1).

Section 502(a)(1)(B) provides:

> "A civil action may be brought -- (1) by a participant or beneficiary -- (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. §1132(a)(1)(B)

In the State Court action, Musisko and his class merely sued for money benefits determined by a set formula as set forth on page 15 of the PIB (Ex. "T", App. 121a). The remedy sought in the State Court action is exactly the same remedy which would have been provided had the suit been brought initially and/or properly removed to Federal Court, under ERISA

§502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B). Respondents' claim did not attempt to supplement or supplant the remedies otherwise provided by ERISA's civil enforcement provision, which served as the basis for the Pilot Life decision, Pilot Life, Id., 481 U.S. at 50.

In Metropolitan Life Insurance Company v. Taylor, 481 U.S. 58 (1987), Plaintiff sued for mental anguish, wrongful termination of his employment, wrongful failure to promote and reimplementation of all benefits and insurance coverages. Once again, the remedies sought were pursuant to State law, which were not provided for under ERISA civil enforcement provisions. This Court held that the case was properly removable to Federal Court under 28 U.S.C. §1441(b). The record did not

support the contention that the Defendants in that suit waited five years before attempting to remove to Federal Court in violation of 28 U.S.C. §1446(b), requiring removal within a thirty (30) day period following receipt of the initial pleading.

Respondents Musisko and Class dispute Petitioners' argument that because Respondents' claim was brought in State Court, this would be the same as bringing their claims under state insurance contract law. The remedies were consistent with Section 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B) which provides:

> "A civil action may be brought -- (1) by a participant or beneficiary -- (B) to recover benefits due him under the terms of his plan..."

The remedy which Respondents sought would have been the same whether their action was brought in State Court or Federal Court and that is simply for money damages afforded to them under the policy in question. The dispute between Respondents Musisko and Class, and Equitable, over the interpretation of the set-off provision of Section 9.37 at issue, was resolved in favor of Respondents by the State Appellate Court, which concluded that the clause in dispute was..."susceptible to another reasonable interpretation." and directed..."entry of judgment in favor of appellant, Glen J. Musisko." Musisko, Id. at 31.

Respondents submit that neither Pilot Life, Id. nor Metro-

politan Life, Id., stand for the proposition that any suit brought in a State Court necessarily means that the suit is brought pursuant to "state law" and therefore can never survive an ERISA challenge, even if timely.

What in truth has happened in the case at bar, is that Petitioners have sat back and watched their insurer defend the merits of the State Court action to the highest Appellate level and then when the State Court action was at its concluding stage, over five years later, proceeded to Federal Court to attempt reversal of the judgment on the merits rendered in the case against their insurer and to have the Pennsylvania Superior Court decision declared null and void on the misguided assumption that ERISA sanctions this

procedure to in effect, nullify five years of prior State judicial proceedings on the same underlying cause of action.

The reason for Petitioners' concern at the concluding stages of the State Court proceedings was due to paragraph 8 of the Equitable policy with Petitioners which provides,... "The policyholder shall reimburse the Society for the portion of any such judgment or settlement paid from the Society's funds which represents an amount of benefits payable from the Policyholder's funds." (App. 104a)

What in reality has happened in the instant proceedings, is that Respondent and his Class have been caught in a dispute between Equitable and Petitioners as to who would be

ultimately responsible for payment to them (see Ex. "N" p. 3 App. 104a). Respondents respectfully submit that the Supreme Court of the United States is not the proper forum for an advisory opinion between Petitioners and their insurance company over who may be ultimately responsible for payments due and owing to Respondents Musisko and Class.

WHEREFORE, for the above mentioned reasons, Respondents respectfully submit that Plaintiffs' Petition for Writ of Certiorari be denied.

Respectfully submitted,

ZOFFER, DILLMAN, WEDNER, FRIEDMAN & FRAYER

_____

Joseph M. Zoffer, Esquire
Counsel for Respondents
Glenn Musisko and Class

CERTIFICATE OF SERVICE

I, Joseph M. Zoffer, hereby certify that three true and correct copies of the foregoing BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIOTATI for Respondents Musisko and Class were served this 8th day of January, 1990, to the following Counsel of Record, in the following manner:

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Sworn to and subscribed

before me this 3rd day

of Jan, 1990

Shirley Novak

Notary Public

NOTARIAL SEAL
SHIRLEY NOVAK, Notary Public
Pittsburgh, Allegheny County, PA
My Commission Expires August 19, 1991

No. 89- 952

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS, USX CORPORATION, as plan sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, plan administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND,

Petitioners,

v.

GLENN MUSISKO AND ALL OTHERS SIMILARLY SITUATED to Glenn Musisko, and THE HONORABLE SILVESTRI SILVESTRI in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF AMICUS CURIAE COLT INDUSTRIES INC IN SUPPORT OF THE POSITION OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Colt Industries Inc ("Colt") respectfully moves the Court for leave to file a brief *amicus curiae* in support of the position of Petitioners United States Steel Corporation Plan for Employee Insurance Benefits, USX Corporation, United States Steel and Carnegie Pension Fund, and United States Steel Insurance Benefit Trust Fund.

Colt has an interest in this case because Colt is presently litigating a case that perhaps more dramatically demonstrates how imperative it is that injunctive relief be available to enforce ERISA's comprehensive and explicit preemption and jurisdictional provisions. Colt is a party in the action styled *Nobers v. Crucible, Inc.*, Civil No. 843-1984 (Ct. of Common Pleas of Beaver County, Pa.). *Nobers* clearly demonstrates the egregious harm that can occur when the lower federal courts, contrary to the Congressional intent embodied in ERISA, refuse to grant injunctive relief to prevent or redress violations of ERISA in the state courts.

The *Nobers* plaintiffs are a group of former salaried employees of Crucible, Inc. ("Crucible"),[1] who had been promoted from previous positions in the collective bargaining unit. When their plant closed, plaintiffs were laid off, terminated, and, upon their application, granted benefits applicable to salaried employees. The essence of plaintiffs' claims is that they should have been discharged from the bargaining unit, rather than being discharged from their positions as salaried employees, so that they could receive benefits applicable to bargaining unit employees. Plaintiffs seek damages equivalent to bargaining unit benefits. In a previous action, the federal district court found

---

[1] Crucible was a wholly-owned subsidiary of Colt at the time the alleged claims against Colt and Crucible arose. Crucible is now reorganized under the name Colt Industries Operating Corporation ("CIOC"). CIOC is also a wholly-owned subsidiary of Colt.

that plaintiffs had no such right under the collective bargaining agreement, and dismissed plaintiffs' claim for benefits against the trustee of the benefit plans under ERISA, for failure to join the applicable benefit plans, and failure to exhaust administrative remedies.

It is plain that the claims and remedies now alleged in state court by plaintiffs against their former employer, and the employer's sole shareholder, are substantively encompassed by § 510 of ERISA, 29 U.S.C. § 1140, which prohibits activity undertaken "for the purpose of interfering with the attainment of any right to which such participant may become entitled under [an ERISA] plan". This is precisely what plaintiffs allege. Their claims are thus subject to the exclusive jurisdiction of the federal courts under § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

However, defendants have been stymied in their efforts to compel the exercise of the exclusive jurisdiction of the federal courts. As discussed in the attached brief *amicus curiae*, defendants have twice removed to federal court, and now, for the second time, interested persons are seeking an injunction against the state court proceedings. Colt wishes in the attached brief *amicus curiae* to bring before the Court its experience in seeking to enforce the clear mandate of ERISA for exclusive jurisdiction of such claims in the federal courts and the exclusive application of ERISA as the substantive law of decision, in order to make clear the significant implications of *Musisko*.

Colt seeks to demonstrate that the implications of *Musisko* extend far beyond its facts, and that complex, idiosyncratic, and unnecessary problems now being created in *Nobers* and in a number of other actions in this area, including, *inter alia*, *Income Security Corp. v. Louisiana Oilfield Contractors Ass'n*, No. 88-4450 (5th Cir. Mar. 22, 1989), *petition for cert. filed*, 58 U.S.L.W. 3009 (U.S. June 26, 1989), *Solicitor General invited to file brief*, 58 U.S.L.W. 3212 (U.S. Oct. 2, 1989), will be very difficult to resolve unless injunctive relief, which provides an avenue

for substantive appellate review as well as enforcement, is available to effectuate ERISA's comprehensive scheme of preemption and jurisdiction in cases such as *Nobers*. If *Musisko* is correct and it is impossible to obtain injunctive relief under ERISA against state court actions that violate ERISA, then an ERISA-covered employee benefit plan and its sponsor (such as Colt's former subsidiary, Crucible), can be left entirely helpless to enforce the ERISA requirement of exclusive jurisdiction of the federal courts and exclusive substantive application of ERISA—a result so clearly contrary to Congressional intent as to demonstrate the error of *Musisko*.

Undersigned counsel for Colt has attempted to obtain consent to the filing of this brief pursuant to Supreme Court Rule 37.2. Counsel for Petitioners have given such consent but counsel for Respondents have indicated that they do not consent. Counsel for Respondents have informed Colt that the principal basis of their refusal is their belief that the facts of *Nobers* argue even more strongly that injunctive relief ought to be available than the facts of *Musisko*, since the claims in *Nobers* are subject to exclusive federal jurisdiction under ERISA.

WHEREFORE, Colt moves this Court to allow the filing the "Brief Of Amicus Curiae Colt Industries, Inc. In Support Of The Position Of Petitioners United States Steel Corporation Plan For Employee Insurance Benefits, USX Corporation, United States Steel and Carnegie Pension Fund, and United States Steel Insurance Benefit Trust Fund", which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

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No. 89-952

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

UNITED STATES STEEL CORPORATION PLAN FOR EMPLOYEE INSURANCE BENEFITS, USX CORPORATION, as plan sponsor; UNITED STATES STEEL AND CARNEGIE PENSION FUND, plan administrator; and UNITED STATES STEEL INSURANCE BENEFIT TRUST FUND,

Petitioners,

v.

GLENN MUSISKO AND ALL OTHERS SIMILARLY SITUATED to Glenn Musisko, and THE HONORABLE SILVESTRI SILVESTRI in his official capacity as Judge of the Court of Common Pleas of Allegheny County, Pennsylvania,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF AMICUS CURIAE COLT INDUSTRIES INC IN SUPPORT OF THE POSITION OF PETITIONERS

Interest of Amicus Curiae Colt Industries Inc

The interest of *Amicus Curiae* Colt Industries Inc ("Colt") is described in the preceding Motion For Leave To File Brief As *Amicus Curiae.*

SUMMARY OF ARGUMENT

In actions involving benefit plans to which ERISA applies, or persons making claims pertaining to such benefit plans, ERISA provides that specified parties are empowered to bring specified claims against specified persons in specified forums. ERISA preempts all substantive state laws encompassed in its boundaries, and contains a very precise structure for the prosecution of preempted claims. Congressional intent to create a uniform body of federal law is clearly embodied in ERISA.

The lower courts are experiencing great difficulty in the application of these fundamental ERISA principles. There are repeated examples of supposed state law claims, substantively preempted by ERISA, which are nevertheless forced into state courts to be adjudicated under nonexistent state law, because the lower federal courts have incorrectly remanded for lack of jurisdiction and/or improvident removal, an error not readily subject to review. Injunctive relief against unauthorized state court proceedings is not only permissible in this context under the Anti-Injunction Act, 28 U.S.C. § 2283, as well as the holding of this Court in *Porter v. Dicken*, 328 U.S. 252 (1946) (cited in *Mitchum v. Foster*, 407 U.S. 225, 235 n.17 (1972)), but must be available to give effect to ERISA's comprehensive preemption and enforcement scheme and assist the resolution of these difficult issues.

The ERISA-preempted claim in *Musisko* is subject to the concurrent jurisdiction of the state courts under § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), but must be asserted against the plan consistent with ERISA's enforcement provisions. Injunctive relief must be available to ensure that ERISA is properly applied in *Musisko*.

The problem comes into sharper focus when considered in the context of claims which are subject to the exclusive jurisdiction of the federal courts under ERISA. With the exception of claims for benefits which are autho-

rized under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), all claims preempted by ERISA are subject to the exclusive jurisdiction of the federal courts by virtue of § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1). Although removal is theoretically available, it has not in practice proven to be an effective solution, in part because of the unreviewability of erroneous orders of remand, and in part because the lower federal courts continue to apply the well-pleaded complaint doctrine despite the holdings of this Court in *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987) and *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987). Problems can only multiply if the only effective avenue for enforcing ERISA's preemption and jurisdictional scheme is foreclosed due to erroneous analyses such as those contained in *Musisko*, and in *Income Security Corp. v. Louisiana Oilfield Contractors Ass'n*, No. 88-4450 (5th Cir. Mar. 22, 1989), *petition for cert. filed*, 58 U.S.L.W. 3009 (U.S. June 26, 1989), *Solicitor General invited to file brief*, 58 U.S.L.W. 3212 (U.S. Oct. 2, 1989).

Certiorari must be granted to resolve the issue presented in *Musisko*, provide guidance to the courts, and provide an avenue for effective enforcement of ERISA's scheme of preemption and jurisdiction.

ARGUMENT

I. The Holding Of The Third Circuit Court May Foreclose The Only Avenue For Effective Enforcement Of ERISA's Preemption And Jurisdictional Scheme

This brief *amicus curiae* is filed to make the Court aware of the wide ramifications of the decision in *Musisko*, which go far beyond the factual situation presented there. While the error of the court below in *Musisko* can be demonstrated on the facts of that case, as petitioners have done in their petition for a writ of certiorari, the error can be seen even more clearly and more startlingly in cases such as the *Nobers* litigation, described more fully below,

to which Colt is a party. It is therefore of benefit to the Court in its consideration of *Musisko* to appreciate how seriously the decision below hamstrings all those who sponsor and administer ERISA-covered employee benefit plans and permits egregious violations of ERISA to go unredressed.

While *Musisko* involves a cause of action under ERISA of which the state and federal courts have concurrent jurisdiction (namely, a claim for benefits by a plan participant), *Nobers* involves a cause of action under ERISA of which the federal courts have exclusive jurisdiction. If *Musisko* is correct and it is impossible to obtain injunctive relief under ERISA against state court actions that violate ERISA, then an ERISA-covered employee benefit plan and its sponsor (such as Colt's former subsidiary, Crucible, Inc. ("Crucible")), can be left entirely helpless to enforce the ERISA requirement of exclusive jurisdiction of the federal courts and exclusive substantive application of ERISA—a result so clearly contrary to Congressional intent as to demonstrate the error of *Musisko*.

A. ERISA Provides Specified Forums And Remedies For Encompassed Claims, Consistent With Congressional Intent To Uniformly And Comprehensively Regulate The Employee Benefit Field

Section 514(a) of ERISA, 29 U.S.C. § 1144(a), provides that ERISA "shall supersede any and all State laws". Congress intended to provide a uniform body of law in this area.[1] ERISA's preemptive force has been repeatedly rec-

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[1] It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or

ognized by this Court.[2] The substantive provisions of ERISA dictate the nature of the state remedies preempted by it.[3]

As to jurisdiction to entertain claims preempted by ERISA, § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), is lucid and specific. It provides (emphasis added):

> Except for actions under subsection (a)(1)(B) of this section [authorizing claims by participants and beneficiaries to recover benefits from ERISA plans], the district courts of the United States shall have *exclusive* jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have *concurrent* jurisdiction of actions under subsection (a)(1)(B) of this section.

ERISA's jurisdictional scheme was carefully crafted by Congress.[4] The federal courts have original jurisdiction

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any instrumentality thereof, which have the force or effect of law.

Joint Explanatory Statement of the Committee of Conference, 120 Cong. Rec. 29,774, 29,933 (daily ed. Aug. 22, 1974), *reprinted in* III Legislative History of the Employee Retirement Income Security Act of 1974, at 4745-46 (1976) ["Legislative History"].

[2] *E.g.*, *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45-46 (1987); *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985); *Shaw v. Delta Air Lines*, 463 U.S. 85, 98 (1983); *Alessi v. Raybestos-Manhattan*, 451 U.S. 504, 523 (1981).

[3] The difficulties apparent in this area arise in part because, unlike many other federal statutes, ERISA preempts, and to some extent co-exists with, certain well-rooted traditional causes of action.

[4] The legislative history of ERISA confirms the careful manner in which this jurisdictional scheme was devised. In early legislative drafts, state and federal courts were granted concurrent jurisdiction over all civil actions brought by a participant or beneficiary.

over *all* ERISA claims, including claims for benefits. The state courts have concurrent jurisdiction, *only* of claims for benefits. A claim within the ambit of ERISA, other than a direct claim for benefits, may be heard only in federal court.

The distinction is of critical importance. Claims for benefits, over which the state courts have concurrent jurisdiction, may only be asserted against, and under the terms of, an ERISA plan. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). ERISA plans are the only entities with liability for benefits due under their terms. ERISA § 502(d)(2), 29 U.S.C. § 1132(d)(2). Benefits promised under the terms of an ERISA plan do not create direct employer liability.

Claims substantively encompassed by § 510 of ERISA, 29 U.S.C. § 1140,[5] are among the most significant of those

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E.g., H.R. 2, 93d Cong., 1st Sess. § 106(g) (1973), S. 4, 93d Cong., 1st Sess. § 604, *both reprinted in* I Legislative History, at 34, 184. Subsequent amendments sharply limited the jurisdiction of state courts to actions involving direct claims for benefits. ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1). The Joint Explanatory Statement of the Committee of Conference elucidates:

> In addition to being able to request the Secretary of Labor to bring suit on their behalf in cases where benefits are denied in violation of the act [i.e., in violation of § 510 of ERISA], individual participants and beneficiaries will also be able to bring suit in Federal court in such instances, as well as to obtain redress of fiduciary violations. In addition, participants and beneficiaries may bring suit to recover benefits denied contrary to the terms of their plan, and where such claims by participants or beneficiaries do not involve application of the substantive requirements of this legislation, they may be brought in either State or Federal courts of competent jurisdiction.

120 Cong. Rec. 29,774, 29,933 (daily ed. Aug. 22, 1974), *reprinted in* III Legislative History, at 4745.

[5] Though § 510 and other substantive provisions dictate the substantive nature of preemption, § 514(a) of ERISA, 29 U.S.C.

over which the federal courts are to exercise exclusive jurisdiction.[6] Section 510 prohibits activity undertaken "for the purpose of interfering with the attainment of any right to which such participant may become entitled under [an ERISA] plan". A supposed state law claim which seeks damages equivalent to benefits, based on an alleged wrongful act by an employer or plan sponsor designed to interfere with rights to receive benefits, is encompassed by § 510; any and all applicable state laws are preempted. Although damages resulting from claims encompassed by § 510 may be equivalent to benefits denied as a result of the wrongful act, these claims are fundamentally different from direct claims for benefits with respect to (1) the legal theory of liability and recovery; (2) the identity of the liable, or potentially liable, parties;[7] and (3) the concurrent versus exclusive jurisdiction of the federal courts under ERISA.

While § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1), provides the jurisdictional authority to entertain claims based on ERISA, and other provisions of ERISA provide the substantive basis for claims, it is § 502(a), 29 U.S.C. § 1132(a), that outlines the array of permissible civil enforcement actions. Claims that are substantively encompassed by § 510, for example, may be asserted through the civil enforcement provision of § 502(a)(3), 29 U.S.C. § 1132(a)(3), only in the federal courts as provided by § 502(e)(1), 29 U.S.C. § 1132(e)(1).

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§ 1144(a), is of course the vehicle through which substantive claims are preempted.

[6] Other claims subject to exclusive federal jurisdiction include those encompassed by § 409 of ERISA, 29 U.S.C. § 1109. *See Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134 (1985) (holding that § 409 does not authorize private claim against employer for improper or untimely processing of benefit claims).

[7] Thus, the fundamental problem in *Musisko* is that the claims were not asserted against the proper party as dictated by ERISA, nor was the proper law applied.

ERISA's preemption, enforcement, and jurisdictional provisions are meaningless without an avenue for effectively ensuring their application. As the following discussion reveals, the injunctive relief requested by petitioners provides such an avenue.

B. The Lower Federal And State Courts Are Experiencing Difficulty In The Application Of ERISA's Preemption And Jurisdictional Scheme

1. *Removal Has Proven To Be An Inadequate Remedy For State Court Actions That Violate ERISA*

A visceral first reaction is that the possibility of removal to federal court should serve to adequately enforce ERISA. Sadly, experience has proven otherwise. Regardless of error, a remand to state court is not reviewable on appeal. 28 U.S.C. § 1447(d). Review by petition for writ of mandamus is sharply circumscribed. See *Gravitt v. Southwestern Bell Telephone Co.*, 430 U.S. 723 (1977); *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976). Where the district court cites improvident removal or lack of jurisdiction as grounds for remand, mandamus relief is ordinarily unavailable:

> [A]fter *Thermtron* reviewability of § 1447 remands turns on what the district court *says* it is doing. If the court *says* it is remanding for lack of jurisdiction, the decision—even if flagrantly wrong—is completely unreviewable. If the court *says* something else, review is available. In other words, reviewability turns on incantation, and the district court has absolute discretion to permit or to deny review of its order.

Sykes v. Texas Air Corp., 834 F.2d 488, 492 (5th Cir. 1987). *See also Air-Shields, Inc. v. Fullam*, No. 89-1295 (3d Cir. Dec. 7, 1989). This Court's direction to the district courts in *Metropolitan Life*, 481 U.S. at 66-67, to conduct a meaningful substantive analysis if ERISA preemption is the basis

of removal[8] cannot be effectively enforced, because remands for lack of jurisdiction are not reviewable.

A review of the case law in this area swiftly reveals widespread problems. Federal district courts have on a number of occasions refused to accept jurisdiction over properly removed ERISA claims, remanding them instead to state courts which often lack jurisdiction to entertain them. Federal appellate courts have, in turn, refused appellate review.

In *New Orleans Public Service, Inc. v. Majoue*, 802 F.2d 166 (5th Cir. 1986), for example, the Fifth Circuit Court considered an appeal of the district court's refusal to enjoin a state court proceeding which was allegedly substantively encompassed by § 510 of ERISA. The Fifth Circuit Court decreed that the action seeking injunctive relief was, in effect, an impermissible attempt to obtain review of the district court's previous order remanding the action to state court. 802 F.2d at 167. As such, the Fifth Circuit Court held that the district court lacked jurisdiction to entertain the claim for injunctive relief. [9]

Indeed, despite the clear guidance of this Court in *Metropolitan Life*, 481 U.S. at 66-67, and *Pilot Life*, 481 U.S. 41, claims preempted by ERISA, even those subject to exclusive federal jurisdiction, have nevertheless been remanded to state court for lack of jurisdiction. *Whitman v. Raley's, Inc.*, 886 F.2d 1177, 1179 (9th Cir. 1989), involved a claim against a former employer for "'tortious refusal to

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[8] This requirement is especially important for claims subject to *exclusive* federal jurisdiction under ERISA.

[9] Requests for injunctive relief and petitions for mandamus do, as a practical matter, represent two potential responses to the same fundamental problem: that of compelling the courts to recognize and give effect to the preeminence of ERISA. Although removal is generally less disruptive of state court proceedings, injunctive relief must also be available, as it would provide a more certain avenue of appellate review.

pay benefits'". Such a claim must be encompassed by § 510 of ERISA, and was accordingly removed to federal court. However, the district court remanded for lack of jurisdiction, simultaneously noting its own uncertainty and certifying a question of law for appellate review. The Ninth Circuit Court, after discussing the doctrine of "complete preemption", dismissed the appeal on the grounds that orders remanding actions for lack of jurisdiction are unreviewable under *Thermtron*. 886 F.2d at 1181-82. Thus, defendant was compelled to return to state court with no avenue for appeal.[10]

Income Security Corp. v. Louisiana Oilfield Contractors Ass'n, No. 88-4450 (5th Cir. Mar. 22, 1989), *petition for cert. filed*, 58 U.S.L.W. 3009 (U.S. June 26, 1989), *Solicitor General invited to file brief*, 58 U.S.L.W. 3212 (U.S. Oct. 2, 1989), bears consideration. There, the district court granted an injunction against state court proceedings after finding that the action was subject to exclusive federal jurisdiction under ERISA. The Fifth Circuit Court peremptorily vacated, holding that injunctive relief is unavailable even though a claim is subject to exclusive federal jurisdiction.[11] Though the claim in *Income Security Corp.* may not be preempted by ERISA and therefore may

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[10] *See also Hansen v. Blue Cross of California*, ___ F.2d ___, (9th Cir. 1989) (refusing to entertain petition for writ of mandamus of district court order remanding action on grounds that complaint was not facially preempted by ERISA); *but see In re Life Ins. Co. of North America*, 857 F.2d 1190 (8th Cir. 1988) (granting mandamus review of remand of "pendent" state claim preempted by ERISA); *Survival Systems v. United States District Court for the Southern District of California*, 825 F.2d 1416 (9th Cir. 1987), *cert. denied*, 484 U.S. 1042 (1988) (denying petition for writ of mandamus after conducting substantive analysis of whether pendent state law claim was preempted by ERISA).

[11] The Fifth Circuit Court based its holding on its previous decision in *Texas Employers Ins. Ass'n v. Jackson*, 862 F.2d 491 (5th Cir. 1988), *cert. denied*, 109 S.Ct. 1932 (1989).

not be subject to exclusive federal jurisdiction so that an injunction is unjustified on the merits,[12] the rationale of the Fifth Circuit Court—a blanket proscription of injunctions—is not the proper solution.[13]

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[12] *Income Security Corp.* involved claims brought in state court against a Mr. Felton, who had been retained by an ERISA plan to act as its actuary, and who had also processed claims for the plan, subject to the approval of the plan's trustees. *See* Respondents' Brief in Opposition to the Petition for Certiorari in *Income Security Corp.*, at 3, 16. Mr. Felton argued successfully in the district court that he was a fiduciary under the provisions of ERISA, and that the claims against him were therefore preempted by ERISA and subject to the exclusive jurisdiction of the federal courts. Actions against fiduciaries are indeed encompassed by § 409 of ERISA, 29 U.S.C. § 1109, and subject to exclusive federal jurisdiction. But people who provide actuarial and claims-processing services to an ERISA plan are not necessarily ERISA fiduciaries; they may lack the discretionary authority to earn the title of "fiduciary". The plan may indeed bring claims against them in state court; such state law claims are not preempted by ERISA.

[13] Similar problems have arisen under the federal labor statutes. This Court has held that ERISA's preemptive scope is so broad as to be singularly equivalent to that of federal labor laws. *See Metropolitan Life*, 481 U.S. at 66 (actions brought under ERISA § 502(a) fall under rule established in *Avco Corp. v. Machinists*, 390 U.S. 557 (1968) for actions preempted by § 301 of the LMRA, 29 U.S.C. § 185). *Texas Employers Ins. Ass'n v. Jackson*, 618 F. Supp. 1316 (E.D. Tex. 1985), involved an action for declaratory and injunctive relief against a state court action preempted by the Longshore and Harbor Workers' Compensation Act ("LHWCA"). Like claims under § 510 of ERISA, 29 U.S.C. § 1140, claims under the LHWCA are subject to the exclusive jurisdiction of the federal courts. *See* 33 U.S.C. §§ 918 & 921(d). The district court accordingly issued an injunction against the state court proceedings. The Fifth Circuit Court reversed, holding that the Anti-Injunction Act barred such injunctive relief. *Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491, 504 (5th Cir. 1988), *cert. denied*, 109 S. Ct. 1932 (1989).

Review of remand orders has also been an issue in the labor law area. *See In re Carter*, 618 F.2d 1093 (5th Cir. 1980), *cert. denied sub nom., Sheet Metal Workers' Intern. Ass'n, AFL-CIO v. Carter*, 450

2. *Nobers Graphically Demonstrates The Inadequacy Of Removal And The Need For Injunctive Relief As Authorized By ERISA*

Nobers v. Crucible, Inc., Civil No. 843-1984 (Ct. of Common Pleas of Beaver County, Pa.), is illustrative of the tangled web confronting defendants.[14] The *Nobers* plaintiffs are former salaried employees of defendant Crucible who were laid off and terminated from their employment as a result of a plant closing. Each of the *Nobers* plaintiffs had been promoted to salaried positions from previous positions in the collective bargaining unit. Upon termination, plaintiffs received benefits applicable to salaried employees.

In 1982, the *Nobers* plaintiffs filed an action in federal court, based on § 301 of The Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, as well as § 502 of ERISA. In their LMRA claims, plaintiffs alleged that the collective bargaining agreement granted them a right to be returned

U.S. 949 (1981) (enforcing exclusive jurisdiction under § 301 of the LMRA); *Kunzi v. Pan American World Airways*, 833 F.2d 1291 (9th Cir. 1987) (Railway Labor Act).

[14] *Schmitt v. Insurance Co. of North America*, 845 F.2d 1546 (9th Cir. 1988), demonstrates an additional difficulty that plagues defendants in state court actions preempted by ERISA: that of inadvertently acquiescing to state court proceedings. There, defendant was obliged to participate in pre-trial proceedings before it became evident that so-called "Doe" co-defendants were non-existent, clearing the way for defendant to remove to federal court. *See* 845 F.2d at 1548. Defendant removed the following day. 845 F.2d at 1547. The district court remanded to state court on the grounds that removal was improvident, and that defendant had waived its right to removal by participating in the state court action. 845 F.2d at 1548. The Ninth Circuit Court held that the district court's order was "not reviewable by appeal or otherwise". 845 F.2d at 1551. Thus, a defendant in a state court action preempted by ERISA is compelled to resist the jurisdiction of the state courts at every turn, or risk being deemed to have "waived" the issues of ERISA preemption and exclusive federal jurisdiction.

by Crucible to, and be terminated from, the bargaining unit rather than be laid-off and ultimately terminated as salaried employees, and that Crucible's failure to exercise its power to return plaintiffs to the bargaining unit had prevented them from attaining eligibility to obtain benefits applicable to bargaining unit employees. The plaintiffs claimed the union had not properly represented them. The complaint contained an apparent state law claim for damages against Colt, the sole shareholder of Crucible. The court granted summary judgment on the LMRA claims,[15] finding that plaintiffs had no right to return to the bargaining unit under the collective bargaining agreement, nor were such rights created by any alleged "past practice". The Third Circuit Court affirmed without opinion. *Nobers v. Crucible, Inc.*, 722 F.2d 733 (3d Cir. 1983).

On June 28, 1984, plaintiffs filed an action in the Court of Common Pleas of Beaver County, Pennsylvania against Crucible and Colt, Crucible's sole shareholder, asserting claims for breach of, and interference with, express and implied contracts of employment. *Nobers v. Crucible, Inc.*, Civil No. 843-1984 (Ct. of Common Pleas of Beaver County, Pa.). According to plaintiffs, these alleged contracts entitled them to be singled out from other salaried employees by reason of their prior membership in the bargaining unit, and returned to, and terminated from, the bargaining unit rather than being terminated as salaried employees. Plaintiffs sought relief in the form of damages equivalent to unemployment, pension, and insurance benefits applicable to bargaining unit employees. Plaintiffs made no claim for lost wages, in tacit acknowledgment that the sole consequence of the wrong allegedly suffered was its alleged effect on benefit eligibility.

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[15] The district court dismissed plaintiffs' ERISA claim for failure to join applicable benefits plans, and failure to exhaust administrative remedies. Plaintiffs did not appeal the dismissal.

It could not be plainer that plaintiffs' claims against their former employer, and the employer's sole shareholder, are encompassed by § 510 of ERISA, 29 U.S.C. § 1140. Section 510 specifically encompasses claims for interference with rights to obtain benefits. *See Dependahl v. Falstaff Brewing Corp.*, 653 F.2d 1208, 1216 (8th Cir.), *cert. denied*, 454 U.S. 968, and *cert. denied sub nom, Dependahl v. Kalmanovitz*, 454 U.S. 1084 (1981); *see also Gavalik v. Continental Can Co.*, 812 F.2d 834, 860 (3d Cir.), *cert. denied*, 484 U.S. 979 (1987). Not only does § 510 provide the exclusive remedy for plaintiffs' claims, but Congress has mandated that the federal courts are to exercise exclusive jurisdiction over claims encompassed by § 510. ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

Within 30 days of receipt of the complaint, defendants removed to federal court. On plaintiffs' motion, the district court, notwithstanding defendants' demonstration of the applicability of § 510, remanded the action on the grounds that ERISA preemption was not established by the "face of the complaint". *Nobers v. Crucible, Inc.*, 602 F. Supp. 703, 708 (W.D. Pa. 1985). There existed at that time a split of authority on the issue of whether supposed state law claims not explicitly invoking ERISA could be removed to federal court. *See Metropolitan Life*, 481 U.S. at 62 n.2. The remand was not subject to appellate review. *See Thermtron*, 423 U.S. 336.

After remand, defendants requested an injunction from the district court, an approach suggested by the district court in its decision remanding the action. *See Nobers*, 602 F. Supp. at 708-09. Injunctive relief was denied. *Nobers v. Crucible, Inc.*, Civil No. 85-563 (W.D. Pa. 1985), *aff'd without opinion*, 787 F.2d 581 (3d Cir. 1986) (holding, largely on a facial review of the complaint, that defendants had failed to make a "strong and unequivocal showing" of relitigation).

This Court's decisions in *Metropolitan Life* and *Pilot Life* followed.[16] On defendants' motion, the Court of Common Pleas dismissed the action on the grounds that it is preempted by ERISA. On appeal, the Superior Court of Pennsylvania ignored *Metropolitan Life* and *Pilot Life*, instead relying on *Shaw v. Westinghouse*, 276 Pa. Super. 220, 419 A.2d 175 (1980),[17] to hold that plaintiffs' claims are not preempted by ERISA even though the relief sought is to obtain damages equivalent to benefits. *Nobers v. Crucible, Inc.*, 376 Pa. Super. 156, 545 A.2d 367 (1988). The Superior Court would thus create a state law cause of action analogous in effect and operation to § 510 of ERISA. *See also McClendon v. Ingersoll-Rand Co.*, ____ Tex. ____, 779 S.W. 2d 69 (1989) (creating state law cause of action analogous to § 510). Congress clearly intended to preempt any such state law causes of action. Nevertheless, the Supreme Court of Pennsylvania denied review. ____ Pa. ____, 559 A.2d 39 (1989). The action was thus returned to the Court of Common Pleas with implicit instructions to do the impossible: assert jurisdiction and apply state law to claims which are subject to exclusive federal jurisdiction and preempted by federal law.

Within 30 days of return to the Court of Common Pleas, defendants filed a renewed notice of removal. The district court granted plaintiffs' motion to remand the action, on the grounds that the renewed notice was filed

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[16] These decisions unequivocally establish that the "face of the complaint" analysis applied by the district court to remand, as well as to deny injunctive relief, is inappropriate in the context of ERISA preemption.

[17] Because the alleged breach of contract at issue in *Shaw* occurred in 1972, ERISA was inapplicable to *Shaw*. See ERISA § 514(a) & (b)(1), 29 U.S.C. § 1144(a) & (b)(1).

more than 30 days after *Metropolitan Life* and *Pilot Life* issued.[18]

Thus, defendants are caught between a federal district court and a state appellate court, both refusing to give effect to ERISA's broad preemptive scope. Although both the district court and the Superior Court have recognized that plaintiffs' claims against at least Colt are in the nature of § 510 claims,[19] neither one is willing to give effect to ERISA preemption and concommitant exclusive federal jurisdiction. Defendants' dilemma illustrates that there must be some avenue for ensuring that ERISA is applied, and that the exclusive jurisdiction of the federal courts is protected. Exclusive jurisdiction is a Congressional mandate, not to be ignored.

C. The Anti-Injunction Act Permits Injunctive Relief To Enforce ERISA's Preemption And Jurisdictional Scheme

In its opinion in *Musisko*, the Third Circuit Court held that the injunction issued by the district court did not fall within the statutory exceptions of the Anti-Injunction Act, 28 U.S.C. § 2283. These exceptions permit an injunction of state court proceedings if expressly authorized by Con-

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[18] In using the issuance of this Court's decisions as a benchmark for the commencement of a 30-day period for removal, the district court imposed its own extra-statutory requirement. See 28 U.S.C. § 1446(b). Hence, defendants shall file a petition for writ of mandamus to seek relief from the district court's order of remand. *See Thermtron*, 423 U.S. 336. Furthermore, the salaried benefit plans have now filed a second complaint for injunctive relief, the determination of which may turn on this Court's resolution of the Third Circuit Court's opinion in *Musisko*.

[19] *See Nobers*, 602 F. Supp. at 707 (plaintiffs' *only* colorable claim against Colt is "a tort action . . . possibly for inducing breach of contract or interference with contractual relations"); *Nobers*, 545 A.2d at 369 (claim against Colt is "for tortious interference of the plaintiffs' contract with . . . Colt's subsidiary").

gress, or necessary in aid of the federal court's jurisdiction, or necessary to protect or effectuate the federal court's judgment. Significantly, the test is disjunctive. Equally significant, certain ERISA preempted actions for which injunctive relief has been denied meet all three of the articulated criteria.

With respect to the first prong of the Anti-Injunction Act test, this Court has noted that "a federal law need not expressly authorize an injunction of a state court proceeding in order to qualify as an exception". *Mitchum v. Foster*, 407 U.S. 225, 237 (1972). ERISA's provisions for preemption and jurisdiction, and the underlying Congressional intent to broadly preempt and regulate this field implicitly yet clearly authorize injunctions of state court proceedings. More explicit guidance is unnecessary. Indeed, in *Porter v. Dicken*, 328 U.S. 252 (1946) (cited in *Mitchum*, 407 U.S. at 235 n.17)), this Court held that a statute granting authority to enjoin acts violating or threatening a violation of the statute was sufficiently broad to authorize injunctions of state court proceedings. The statute, the Emergency Price Control Act of 1942, 56 Stat. 33, provided:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices.

Similarly, § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), provides that a civil action may be brought:

> by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter[20] or the terms of the plan, or (B) to

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[20] The term "subchapter" in § 502(a)(3) encompasses all of Title I of ERISA, *see* H.R. Rep. No. 1280, 93d Cong., 2d Sess., at 75 (1974), *reprinted in* III Legislative History, at 4350, and therefore includes such substantive provisions as § 510, 29 U.S.C. § 1140.

obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

Certainly, § 502(a)(3), when viewed in the overall context of ERISA, is sufficiently broad to authorize injunctive relief on behalf of an ERISA fiduciary who is seeking to enforce ERISA's preemptive and jurisdictional provisions, just as the Price Administrator was authorized by the Emergency Price Control Act to seek injunctive relief in federal court.[21] Fiduciaries must be able to apply to federal court to enjoin state court proceedings which threaten the integrity of ERISA.

The second prong of § 2283 recognizes that federal courts must be able to exercise injunctive powers in aid of their jurisdiction. State court jurisdiction under ERISA is of a very limited and specific nature; it is confined to claims for benefits properly asserted against an ERISA plan. The state court in *Musisko* exceeded the authority extended to it under ERISA, and thus the decision of the Third Circuit Court must be reversed to give effect to the Congressional intent embodied in ERISA's comprehensive preemption and jurisdictional scheme. This issue is even more sharply focused for claims of which the federal courts are granted exclusive jurisdiction by § 502(e)(1) of ERISA. 29 U.S.C. § 1132(e)(1).

Indeed, § 510 itself contains a statement that it may be enforced through § 502. 29 U.S.C. § 1132.

[21] This Court reasoned in *Porter*, 328 U.S. at 252, that:

> [Section] 205 authorizes the Price Administrator to bring injunction proceedings to enforce the Act in either state or federal courts, and this authority is broad enough to justify an injunction to restrain state court evictions . . . . Since the provisions of the Price Control Act, enacted long after [the Anti-Injunction Act], do not compel the Administrator to go into the state courts but leave him free to seek relief in the federal courts, he was not barred by [the Anti-Injunction Act] from seeking an injunction to restrain an unlawful eviction.

Yet the Third Circuit Court in *Musisko*, and the Fifth Circuit Court in *Income Security Corp.*[22] and *Majoue*, have held that injunctive relief is unavailable to protect federal jurisdiction of claims preempted by ERISA.[23] These blanket prohibitions are not only incorrect, but they are in conflict with *Gilbert v. Burlington Indus.*, 765 F.2d 320 (2d Cir. 1985); *aff'd mem sub nom. Roberts v. Burlington Indus.*, 477 U.S. 901 (1986); *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir. 1980); *Marshall v. Chase Manhattan Bank*, 558 F.2d 680 (2d Cir. 1977).

Finally, under the third prong of the Anti-Injunction Act test, the federal courts have injunctive power to protect or effectuate their judgments. This concern is implicated in *Nobers*. Civil No. 843-1984 (Ct. of Common Pleas of Beaver County, Pa.). The *Nobers* plaintiffs began their journey with a claim for benefits,[24] which was dismissed by the district court. Defendants have argued in the district court, the Third Circuit Court, and the state courts, that the subsequent action filed in the Court of Common Pleas is merely a relitigation of the claim for benefits dismissed by the district court. The district court itself indicated, in its first opinion remanding the action,

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[22] The Solicitor General, in his brief filed in response to this Court's invitation in *Income Security Corp.*, argued that injunctive relief should not be available, no doubt because the claims in that case are not preempted by ERISA in the first instance, and cannot implicate such crucial issues as the exclusive jurisdiction of the federal courts. It is clear that injunctive relief is entirely inappropriate if the state court action is not preempted by ERISA, as appears to be the case in *Income Security Corp.*

[23] The Ninth Circuit Court in *Whitman*, 886 F.2d 1177, and *Hansen*, ___ F.2d. ___, has steadfastly refused to grant mandamus relief for actions erroneously remanded to state court, despite ERISA preemption. *But see In re Life Ins. Co. of North America*, 857 F.2d 1190 (8th Cir. 1988).

[24] In the same initial action, plaintiffs' claims under the LMRA were denied on a motion for summary judgment.

that res judicata might constitute a bar to plaintiffs' claims. Nevertheless, the district court subsequently applied a "face of the complaint" analysis to deny injunctive relief.

The sound and well-known principles underlying the doctrine of res judicata are of heightened importance, because of the broad preemption and specific jurisdictional provisions set forth in ERISA. As *amicus curiae* has demonstrated, these ERISA provisions are meaningless unless injunctive relief is available.

CONCLUSION

For the reasons stated above, the Court should grant Petitioners' petition for writ of certiorari and reverse the decision of the court below.

Respectfully submitted,

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